



May 5, 2021

Mr. Michael Mosier  
Acting Director  
Financial Crimes Enforcement Network  
U.S. Department of the Treasury  
2070 Chain Bridge Road  
Vienna, VA 22182

Policy Division  
Financial Crimes Enforcement Network  
Docket Number FINCEN-2021-0005; RIN 1506-AB49

**Advance Notice of Proposed Rulemaking  
Beneficial Ownership Information Reporting Requirements**

Dear Director Mosier,

The American Institute of CPAs (“AICPA”) is pleased to comment on the advance notice of proposed rulemaking (“ANPRM”) soliciting public comment on questions pertinent to the implementation of the Corporate Transparency Act (“CTA”). We support the efforts of the Financial Crimes Enforcement Network (“FinCEN”) to protect vital U.S. national security interests and interstate and foreign commerce, and to better enable critical national security, intelligence, and law enforcement efforts to counter money laundering, the financing of terrorism, and other illicit activity. We applaud FinCEN’s systematic, thoughtful approach to establishing an appropriate system for companies to report beneficial ownership information. In implementing the reporting requirements of the CTA, the AICPA urges FinCEN to carefully consider the burden and cost imposed by the new reporting requirements on certain companies that could be subject to the reporting requirements, including the extent to which such requirements may be duplicative for these companies.

In this regard, below please find our comments on certain questions identified in the ANPRM that relate to this issue. For each question in the ANPRM that we are providing a response, we have summarized the question below in italics.

***Question 7*** requests comment on whether FinCEN should consider any categories of entities that are not currently subject to an exemption from the definition of “reporting company” for an exemption pursuant to its authority.

The U.S. Congressional Budget Office estimates that 25 to 30 million beneficial ownership filings by reporting companies would be made each year.<sup>1</sup> The CTA provides the Secretary of the Treasury (the “Secretary”), with the written concurrence of the Attorney General and the Secretary of Homeland Security, authority to exempt additional entities or a class of entities, by regulation, if requiring beneficial ownership information from the entity or class of entities: (1) would not serve the public interest; and (2) would not be highly useful in national security, intelligence, and law enforcement agency efforts to detect, prevent, or prosecute money laundering, the financing of terrorism, proliferation finance, serious tax fraud, or other crimes.<sup>2</sup>

In considering this authority, the AICPA notes as an initial matter that Congress decided to exclude public accounting firms registered with the Public Company Accounting Oversight Board (“PCAOB”) from the scope of the “reporting company” requirements in the CTA.<sup>3</sup> As of April 2021, there are 866 U.S. public accounting firms registered with the PCAOB to which this exemption will apply.<sup>4</sup> In exercising its oversight authority over registered public accounting firms, the PCAOB has access, among other things, to information about firm structures and ownership. In view of this access, Congress determined that additional reporting by registered public accounting firms was not necessary and thus authorized the exemption.

A similar basis for exemption should be applied to all state-licensed certified public accounting firms (CPA firms) in the United States, even those that are not currently registered with the PCAOB. There are more than 50,000 CPA firms in the 55 United States licensing jurisdictions. An accounting firm must obtain a license from a relevant state board of accountancy in order to practice as a CPA firm or public accounting firm. There is robust oversight at the state level<sup>5</sup> that occurs as a result of this licensing requirement. Although the specific provisions that govern the manner in which a state may exercise its oversight authority vary, there is a substantial framework that is used for state oversight of CPA firms. Indeed, the accountancy provisions of most states draw in significant part from the Uniform Accountancy Act which helps to promote substantial consistency in oversight principles across states.<sup>6</sup> For example, CPA firms must register with the applicable state board of accountancy and in doing so, become subject to state accountancy statutes and regulations set by the respective state legislatures and boards. Indeed, state boards of accountancy often seek ownership-related information from CPA firms, such as requiring information about owners in connection with annual license renewals or when there are changes in ownership.<sup>7</sup> Notably, FinCEN’s 2016 Q&A

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<sup>1</sup> Congressional Budget Office Cost Estimate for H.R. 2513, Corporate Transparency Act of 2019.

<sup>2</sup> 31 U.S.C. 5336(a)(11)(B)(xxiv).

<sup>3</sup> 31 U.S.C. Sec. 5336(a)(11)(B)(xv) (defining “reporting company” and specifically exempting public accounting firms registered in accordance with section 102 of the Sarbanes-Oxley Act of 2002).

<sup>4</sup> See *Registered Firms*, PCAOB, <https://pcaobus.org/oversight/registration/registered-firms>.

<sup>5</sup> The term “state level” refers to all 55 U.S. licensing jurisdictions, including the 50 U.S. states, the District of Columbia, Guam, the Northern Mariana Islands, Puerto Rico, and the U.S. Virgin Islands.

<sup>6</sup> See *generally* Unif. Acct. Act (2018).

<sup>7</sup> See, e.g., Cal. Code Regs., tit. 16, art. 3, § 20(c)(2) (requiring each registered out-of-state CPA firm to notify the board of any change in its ownership within 30 days after the change); Ga, Comp. R & Regs. § 20-7-.01(3) (requiring notice to be given to the Board within 30 days of the admission to or withdrawal of a partner, stockholder, or member from any licensed firm); Ill. Admin Code, tit. 68, § 1420.30(c) (requiring notice to the board

document discussing the Customer Due Diligence Rule expressly excludes “entities that are subject to Federal or State regulations and for which information about their beneficial ownership and management is available from the Federal or State agencies” from being required to provide beneficial ownership information.<sup>8</sup>

State accountancy laws also specify requirements and qualifications for ownership. For example, in nearly all states, CPA firms must be owned by a simple majority of certified public accountants (“CPAs”) and owners who are not licensed CPAs must be active individual participants in the CPA firm or affiliated entities. The CPA profession also is distinguished by rigorous educational requirements including, at minimum, a bachelor’s degree and (for most states) at least 150 credit hours of education, passage of the Uniform CPA Examination, and Continuing Professional Education. In addition, CPAs are held to strict professional standards, including a code of conduct, an ethics code, and a commitment to serving the public interest.

We believe that the categories of exempt entities should be expanded to minimize unnecessary burdens and compliance costs, as well as limit duplicative reporting and filing responsibilities.<sup>9</sup> In view of the extensive state oversight of licensed CPA firms that already exists, including the beneficial ownership reporting already occurring across many states and the professional standards to which CPAs must hold themselves, **we encourage the Secretary to exercise the authority to exempt all licensed or registered CPA firms in the United States from the CTA’s beneficial ownership requirement.**<sup>10</sup> In this regard, the CTA states the Secretary should “minimize burdens on reporting companies associated with the collection of the information . . . in light of private compliance costs placed on legitimate businesses, including by identifying any steps taken to mitigate the costs relating to compliance with the collection of information.”<sup>11</sup> Similarly, the Secretary is directed to “minimize burdens on reporting companies associated with the collection of beneficial ownership information, including by eliminating duplicative requirements.”<sup>12</sup> Given the oversight of CPA firms exercised by state accountancy

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of changes in ownership at the time of renewal); M.D. Bus. Occ. & Prof. Code § 2-408 (a) (requiring notice within one month of a change in ownership to the board for those intending to practice certified public accountancy in the state); N. Mex. Stat., art. 28B, § 61-28B-13(J) (requiring notice of a change in ownership within 30 days and during renewal of a permit); N.Y.S. Pub. Acc. Laws § 70.8(f) (requiring notice to the board during annual renewal of any resignation, termination, retirement, or death of a partner, member, or shareholder); Oh. Rev. Code § 4701.04(B) (requiring notice to the board of a change in ownership at the time of renewal registration applications); Tex. Admin. Code § 513.16 (b) (requiring notice of a change in the status of the firm’s ownership to the board during the annual licensing application); Wash. Admin. Code § 4-30-114(3) (requiring notice within 90 days of the admission or withdrawal of a resident licensee owner to the board).

<sup>8</sup> FinCEN, *Frequently Asked Questions (FAQs)* (July 19, 2016),

[https://www.fincen.gov/sites/default/files/2016-09/FAQs\\_for\\_CDD\\_Final\\_Rule\\_\(7\\_15\\_16\).pdf](https://www.fincen.gov/sites/default/files/2016-09/FAQs_for_CDD_Final_Rule_(7_15_16).pdf).

<sup>9</sup> 31 U.S.C. Section 5336(b)(1)(F) (explaining requirements of the regulation).

<sup>10</sup> *Id.* (“[A]ny entity or class of entities that the Secretary of the Treasury, with the written concurrence of the Attorney General and the Secretary of Homeland Security, has, by regulation, determined should be exempt from the requirements of subsection (b).”).

<sup>11</sup> H.R. 6395 (2021), Section 6403(b)(1)(F)(iii).

<sup>12</sup> H.R. 6395 (2021), Section 6403(b)(4)(B)(i).

boards, which in numerous states encompasses reporting of ownership information, we submit that additional reporting to FinCEN is unduly burdensome and duplicative in many instances.

Further, considering the CTA's current statutory exclusions and CPA firm requirements to report ownership information to relevant state boards of accountancy, without an exclusion for all CPA firms, the burden of the "reporting company" requirements will fall disproportionately on smaller accounting firms. "Beneficial owner" is defined to mean an individual who exercises substantial control over the reporting company or who has not less than 25% ownership of the reporting company. More than 80% of the approximately 50,000 CPA firms in the United States are smaller firms. Indeed, approximately 30,000 or more of these CPA firms are sole practitioners, with many organized as LLCs. Thus, because these smaller firms in many instances are likely to have owners who hold more than 25% interest in such firms, it seems the reporting obligation will disproportionately burden smaller firms. Yet, these smaller CPA firms also are licensed in relevant states and must also comply with state certification requirements as discussed above. As a result, it would be particularly burdensome to apply the reporting company requirements to these smaller CPA firms.

***Question 2*** requests comment on what additional clarifications would make it easier to determine whether the reporting requirement applies to a particular entity.

As set forth in our response to Question 7 above, many state boards of accountancy already require CPA firms to identify owners upon registration and upon the annual renewal process. In certain instances, states also require the reporting of the new owners in the event of an ownership change, such as the death of an owner or the addition of a new partner, external to the annual firm renewal.<sup>13</sup> Additionally, it is worth noting that some state boards of accountancy may require firms to provide updates to owners' information even if that requirement is not specifically cited in statute and/or rule. In these states, accountancy statutes and/or rules give boards latitude in setting the requirements for the application and renewal of firm licenses. At a minimum, CPA firms located in states that require a licensed firm in that state to report ownership information should be exempt from the "reporting company" requirements, and FinCEN should be able to identify such states by consulting state boards of accountancy.

***Question 9*** requests comment on how a company's eligibility for any exemption from the reporting requirements, including any exemption from the definition of "reporting company," should be determined.

Please see responses to Questions 2 and 7.

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<sup>13</sup> See, e.g., Cal. Code Regs., tit. 16, art. 3, § 20(c)(2) (requiring notice of a change in ownership within 30 days of the change); Ga. Comp. R & Regs. § 20-7-.03(i) (same); N. Mex. Stat., art. 28B, § 61-28B-13(J) (same); Wash. Admin. Code § 4-30-114(3) (requiring notice of a change in ownership within 90 days of the change).

**Question 11** requests comment on what information FinCEN should require a reporting company to provide about the reporting company’s corporate affiliates, parents, and subsidiaries, particularly given that in some cases multiple companies can be layered on top of one another in complex ownership structures.

As noted above, Section 6403(a)(11)(B)(xv) of the CTA provides for an exemption of public accounting firms “registered in accordance with section 102 of the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7212).” Section 6403(a)(11)(B)(xxii) also provides for an exemption for entities “of which the ownership interests are owned or controlled, directly or indirectly, by 1 or more entities described in clause (xv) [i.e., the exempted entities, including PCAOB-registered firms].” Through the operation of these two provisions, entities controlled (directly or indirectly) by PCAOB-registered firms also will be exempt.

However, other affiliates of such public accounting firms – for example, entities that are affiliated because the PCAOB-registered firm is under common control with a sister entity firm – would not be covered by the exemption. This gap should be addressed because the same rationale that supports extending the exemption to controlled entities supports extending the exemption to parent and commonly-controlled affiliate entities: that is, the PCAOB through its oversight authority has access to information about registered accounting firms and their affiliates. Thus, PCAOB-registered firms and their affiliates (including any entity controlling, controlled by, or under common control of the PCAOB-registered firm) are appropriately excluded from the reporting requirements.

**Question 12** requests comment on whether a reporting company should be required to provide information about its corporate affiliates, parents, and subsidiaries as a matter of course, or only when that information has a bearing on the reporting company’s ultimate beneficial owner(s).

Please see response to Questions 11.

**Question 29** requests comment on how FinCEN can best protect its identifiers from being used without individuals’ and entities’ authorization.

We recommend that FinCEN consider the use of the AICPA Privacy Management Framework (“PMF”) as a foundational element in establishing and operating a comprehensive information privacy program that addresses privacy obligations and risks. The PMF can help develop effective processes and controls over the safeguarding of “identifiers” and other private information collected from individuals and entities and held in the FinCEN database. The PMF contains the following nine components: 1) Management; 2) Agreement, notice and communication; 3) Collection and creation; 4) Use, retention and disposal; 5) Access; 6) Disclosure to third parties; 7) Security for privacy; 8) Data integrity and quality; and 9) Monitoring and enforcement.<sup>14</sup>

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<sup>14</sup> Additional information may be found at *Privacy Management Framework*, AICPA, <https://www.aicpa.org/interestareas/informationtechnology/privacy-management-framework.html>.

Each of these components were developed by considering the risks that organizations often face when developing effective policies and procedures around data privacy and security. Therefore, applying the PMF would assist FinCEN with protecting “identifiers” and other information received from individuals and entities that submit such information in accordance with the proposed rules.

**Question 41** requests comments on how FinCEN can best reach out to members of the small business community to ensure the efficiency and effectiveness of the filing process for entities subject to the requirements of the CTA.

As the responsibilities and burden of the beneficial ownership reporting requirements will fall primarily on small businesses, we recommend that FinCEN establish a Small Business Beneficial Ownership Advisory Group consisting of representatives from small businesses and trade groups with members subject to the requirements of the CTA. The small business advisory group would advise on matters for which FinCEN may seek guidance, outreach or partnering with the small business community.

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The AICPA is the world’s largest member association representing the CPA profession, with more than 431,000 members and 44,000 CPA firms in the United States and worldwide, and a history of serving the public interest since 1887. Our members advise clients on federal, state and international tax matters and prepare income and other tax returns for millions of Americans. Our members provide services to individuals, not-for-profit organizations, small and medium-sized businesses, as well as America’s largest businesses.

We appreciate your consideration of our recommendations and welcome the opportunity to further discuss our comments. If you have any questions, please contact Kate Kiley, Director, Congressional and Political Affairs at 202-434-9219, or [Kate.Kiley@aicpa-cima.com](mailto:Kate.Kiley@aicpa-cima.com); or Ian MacKay, Director, Federal Regulatory Affairs at 202-434-9253, or [Ian.MacKay@aicpa-cima.com](mailto:Ian.MacKay@aicpa-cima.com).

Sincerely,



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