



WRITTEN STATEMENT

OF

THE AMERICAN INSTITUTE OF CPAs

SUBMITTED FOR THE RECORD OF THE

JULY 18, 2023

HEARING OF

THE UNITED STATES HOUSE OF REPRESENTATIVES
COMMITTEE ON FINANCIAL SERVICES

SUBCOMMITTEE ON NATIONAL SECURITY, ILLICIT FINANCE, AND
INTERNATIOANL FINANCIAL INSTITUTIONS

ON

POTENTIAL CONSEQUENCES OF FINCEN'S BENEFICIAL OWNERSHIP
RULEMAKING

INTRODUCTION

The American Institute of CPAs (AICPA) appreciates the leadership taken by the House Committee on Financial Services to ensure businesses’ sensitive information is protected and is a priority as the Financial Crimes Enforcement Network (FinCEN) moves forward with the implementation of the beneficial ownership information (BOI) reporting rule. Additionally, we also acknowledge the efforts the House Committee on Financial Services has made to encourage FinCEN to raise awareness and educate businesses of their reporting obligations and possible penalties for non-compliance.

As the national, professional organization for all Certified Public Accountants, the AICPA’s mission is to power the success of global business, CPAs, CGMAs, and specialty credentials by providing the most relevant knowledge, resources and advocacy, and protecting the evolving public interest. As such, we provide a recommendation that is fair, reasonable, and allows for transparency and visibility as businesses understand their BOI reporting requirement. Specifically, we recommend FinCEN delay the implementation of the BOI reporting requirements until all proposed rules are finalized. Without a delay and given the lack of awareness and steep penalties, we are concerned that millions of businesses, small businesses in particular, will face further hardship and confusion as they try to meet their BOI filing requirement on January 1, 2024.

RECOMMENDATION

In furtherance of our commitment to the public interest, the AICPA recommends FinCEN delay the effective date of the beneficial ownership information reporting requirements until all rules required under the Corporate Transparency Act (CTA) have been issued and are final.

BACKGROUND

The CTA, enacted on January 1, 2021, amends the section of the Bank Secrecy Act that requires record-keeping and report filings on specific types of financial transactions. As part of the CTA, and via a rulemaking process led by FinCEN (an agency of the Department of Treasury), small businesses must begin reporting their beneficial owners’ information on January 1, 2024. The BOI reporting requirement is intended to “enhance the ability of FinCEN and other agencies to protect U.S. national security and the U.S. financial system from illicit use and provide essential information to national security, intelligence, and law enforcement agencies; state, local, and Tribal officials; and financial institutions to help prevent drug traffickers, fraudsters, corrupt actors such as oligarchs, and proliferators from laundering or hiding money and other assets in the United States.”¹

¹ FinCEN, “[Beneficial Ownership Information Reporting Rule Fact Sheet](#),” September 29, 2022.

Currently, there are few states that require companies to disclose BOI. The lack of transparency allows for shell and front companies to launder illegal money. According to FinCEN, by collecting BOI from businesses and sharing the information with law enforcement and financial institutions, the United States will more effectively combat laundering of illegal money.

BOI reporting requires entities to identify beneficial owners and company applicants, among other information (e.g. full legal name, business address, state or Tribal jurisdiction of formation, IRS TIN, birthdate, etc.). In general, beneficial owner is defined as “any individual who, directly or indirectly, either (1) exercises substantial control over a reporting company, or (2) owns or controls at least 25 percent of the ownership interests of a reporting company”² and company applicant is defined as “to be only two persons: 1. the individual who directly files the document that creates the entity, or in the case of a foreign reporting company, the document that first registers the entity to do business in the United States. 2. the individual who is primarily responsible for directing or controlling the filing of the relevant document by another.”³

Effective January 1, 2024, existing companies, companies created or registered before January 1, 2024, will have one year, through January 1, 2025, to file their initial BOI reports. New companies, companies created or registered on or after January 1, 2024, will have 30 days to file their initial BOI reports. If there are inaccuracies in the initial BOI report filed or companies have a change in information, such as change in residential address or percentage of ownership, they will have 30 days to report changes or correct the inaccuracies.

A company is defined as a corporation, a limited liability company or any other entity created by the filing of a document with a secretary of state or any similar office under the law of a state or Indian tribe. A foreign company is defined as a corporation, limited liability company, or other entity formed under the law of a foreign country and is registered to do business in any state or in any Tribal jurisdiction, by the filing of a document with a secretary of state or any similar office under the law of a state or Indian tribe.

Companies with more than 20 employees and gross revenue of over \$5 million or a publicly traded company registered under Section 102 of Sarbanes-Oxley are exempt from the BOI filings. In total, the CTA allows for 23 types of entities to be exempt⁴ from the BOI reporting requirement –

² FinCEN, “[Beneficial Ownership Information Reporting Rule Fact Sheet](#),” September 29, 2022.

³ *Id.*

⁴ Exemptions are: Certain types of securities reporting issuers. A U.S. governmental authority. Certain types of banks. Federal or state credit unions as defined in section 101 of the Federal Credit Union Act. Bank holding company as defined in section 2 of the Bank Holding Company Act of 1956, or any savings and loan holding company as defined in section 10(a) of the Home Owners’ Loan Act. Certain types of money transmitting or money services businesses. Any broker or dealer, as defined in section 3 of the Securities Exchange Act of 1934, that is registered under section 15 of that Act (15 U.S.C. 78o). Securities exchanges or clearing agencies as defined in section 3 of the Securities Exchange Act of 1934, and that is registered under sections 6 or 17A of that Act. Certain other types of entities registered with the Securities and Exchange Commission under the Securities Exchange Act of 1934. Certain types of investment companies as defined in section 3 of the Investment Company Act of 1940, or investment advisers as

many of the exempt entities are already regulated by federal or state governments and already have BOI filing requirements.

The CTA also provides for civil and criminal penalties if an entity is identified as willfully not complying with the BOI reporting requirements. Civil penalties are assessed at \$500 per day for as long as a violation exists up to \$10,000, and criminal penalties could include up to two years of prison time.

CONCERNS

Lack of Awareness

FinCEN has estimated that during the first year of the BOI reporting implementation there will be approximately 32.6 million filings. FinCEN also estimated that there will be an additional five to six million filings each year thereafter. Given the comprehensive scope of filers, awareness of the BOI reporting requirement is critical, yet, most businesses are in the dark about the existence of this filing. In conversations with members, such as a sole practitioner in Pennsylvania, a two-person firm in New Orleans, a mid-size firm in California, we saw their shocked expressions as they learned about this reporting requirement and the associated penalties. Over and over, we have heard that their business clients were unaware FinCEN even existed, much less that this obscure government agency would be requiring sensitive, personally identifiable information, in a new filing. House Financial Services Committee Chairman Patrick McHenry echoed our findings in a June 7 letter to the Department of Treasury and FinCEN saying, "It is concerning ... FinCEN has yet to lay out a clear plan for engagement. It is highly unlikely that the 32 million small business owners know what FinCEN is let alone know to look for a press release on FinCEN's website. As a result, there is a real possibility that these small businesses could be held civilly or criminally liable for noncompliance."⁵

defined in section 202 of the Investment Advisers Act of 1940. Certain types of venture capital fund advisers. Insurance companies defined in section 2 of the Investment Company Act of 1940. State-licensed insurance producers with an operating presence at a physical office within the United States, and authorized by a state, and subject to supervision by a state's insurance commissioner or a similar official or agency. Commodity Exchange Act registered entities. Any public accounting firm registered in accordance with section 102 of the Sarbanes-Oxley Act of 2002. Certain types of regulated public utilities. Any financial market utility designated by the Financial Stability Oversight Council under section 804 of the Payment, Clearing, and Settlement Supervision Act of 2010. Certain pooled investment vehicles. Certain types of tax-exempt entities. Entities assisting a tax-exempt entity described in (xix) above. Large operating companies with at least 20 full-time employees, more than \$5,000,000 in gross receipts or sales, and an operating presence at a physical office within the United States. The subsidiaries of certain exempt entities. Certain types of inactive entities that were in existence on or before January 1, 2020, the date the Corporate Transparency Act was enacted. See FinCEN Question #8, Are there exemptions from the reporting requirement? "[Beneficial Ownership Information Reporting Frequently Asked Questions](#)."

⁵ House Committee on Financial Services (HFSC) Chairman Patrick McHenry, Chairman of the House Committee on Small Business Chairman Roger Williams, HSFC Subcommittee on National Security, Illicit Finance, And International Financial Institutions Chairman Blaine Luetkemeyer, House Committee Subcommittee on Financial

Out of concern for not only taxpayers who seek professional financial advice but for all small businesses, the AICPA led a coalition ranging from organizations that represent small businesses to underserved populations and diverse communities to raise awareness. Through a vigorous social media awareness campaign launched in May, the coalition collectively spoke out. The AICPA also created FAQs geared towards [taxpayers](#) and for [accounting and finance professionals](#). Additionally, the AICPA created a [draft form](#), based on FinCEN's proposed summary of data fields printed in the Federal Register January 17, 2023,⁶ for people to understand the scope of the filing requirement. The AICPA shared these resources with the coalition members to distribute with their respective members. The educational resources have also been discussed at almost every major conference attended by AICPA members. Additionally, an [online resource center](#), articles, podcasts, webinars and other resources have been developed consistently since May.

The AICPA urges FinCEN to start raising awareness immediately. Through our various outreach efforts, we have found that small businesses are largely unaware of the BOI requirements. In fact, one of our coalition members, Roger Harris of Padgett Business Services, confirmed our concern when he said, "I have never seen something this important that impacts this many businesses that, so few people know about."⁷ Without awareness, it is necessary for FinCEN to delay the implementation of the BOI filing requirement.

Burdens on Small Businesses

FinCEN has estimated that there will be 32,800,422 burden hours for entities to complete the filing in the first year with an estimated cost of up to \$2,614.87 per entity depending on their structure. However, this estimated cost does not account for the added stress associated with requiring a monthly tracking of all business owner's information to anticipate when changes could or have occurred. When a reportable change occurs, business owners usually have many activities to undertake, making the 30-day BOI reporting timeframe particularly difficult to comply with. Moreover, this figure does not consider additional legal or other formation costs required of businesses, particularly in the first year, to understand and identify who exactly is a "beneficial owner," who exercises "substantial control," who would be the "applicant" or whether a small business even is considered a "reporting company." For some small businesses, these definitions may be somewhat simple to understand, but for others with more complex ownership or partnership arrangements, these definitions may change frequently or require significant professional advice to understand.

Services and General Government Chairman Steve Womack, [letter to the U.S. Department of Treasury and FinCEN](#), June 7, 2023.

⁶ Agency Information Collection Activities; Proposed Collection; Comment Request; Beneficial Ownership Information Reports, proposed, FinCEN, [Federal Register, Vol. 88, No. 10](#), January 17, 2023.

⁷ AICPA press release, "[Coalition Calls Attention to New Beneficial Ownership Information Reporting Requirements](#)," May 15, 2023.

It is significant to note here that the CTA outlined four key, and for many small businesses, easily identifiable and obtainable pieces of information to include in the reporting company's filing for each beneficial owner:⁸

- (i) full legal name;
- (ii) date of birth;
- (iii) current, as of the date on which the report is delivered, residential or business street address; and
- (iv) (I) unique identifying number from an acceptable identification document; or
(II) FinCEN identifier in accordance with requirements in paragraph (3)

However, the information proposed to be collected by FinCEN and printed in the January 17, 2023, Federal Register, is much broader than the four key pieces of information intended by the CTA. FinCEN outlines 51 questions and many with multiple sub-part questions.⁹ As noted above, the four key pieces of information may be reasonably identifiable for most small businesses. In some cases though, small businesses will encounter difficulty in easily identifying information as proposed by FinCEN be reported. To comply, these entities may require professional advice.

Certain new domestic businesses also have the added concern of when they receive their employer identification number (EIN) from the Internal Revenue Service, which is required to complete the BOI filing. For certain domestic entities, receiving an EIN takes a minimum of several weeks, and sometimes much longer. Accordingly, for such affected new domestic entities, it will be very difficult, if not impossible in some cases, for them to meet the 30-day filing deadline.

Furthermore, civil and criminal penalties are arbitrarily based on "willfully" not complying with the BOI reporting requirements. Case law defines willfully as "if done voluntarily and intentionally and with the specific intent to do something the law forbids. There is no requirement that the government show evil intent on the part of the defendant in order to prove that the act was done 'willfully.'"¹⁰ For business owners who innocently lack awareness or business owners with many obligations and unable to keep financial filing requirements at the forefront of their minds, the arbitrary definition of "willfully" leaves little comfort given the gravity of the penalties for noncompliance.

A delay in implementation would allow small businesses, as well as accounting and finance professionals, to gain awareness and to establish processes to ensure timely filing when changes occur.

⁸ The Corporate Transparency Act as codified at [31 U.S.C. 5336\(c\)](#).

⁹ Agency Information Collection Activities; Proposed Collection; Comment Request; Beneficial Ownership Information Reports, proposed, FinCEN, [Federal Register, Vol. 88, No. 10](#), January 17, 2023.

¹⁰ Department of Justice Archives, "[910. Knowingly and Willfully](#)," January 21, 2020.

Unauthorized Practice of Law for Non-Attorney Practitioners

Unauthorized practice of law is defined as “the practice of law by a person, typically a non-lawyer, who has not been licensed or admitted to practice law in a given jurisdiction.”¹¹ Each state has a state specific interpretation of unauthorized practice of law.

As noted, in certain circumstances businesses will need professional advice to determine required information to complete the BOI requirement, such as who is a business owner or a company applicant. There is debate that accounting and finance professionals providing advice to a business on such determinations could be considered unauthorized practice of law. However, it is accounting and finance professionals that often help businesses legally establish themselves and have the most readily available information to complete the BOI filing requirement. A delay in the implementation of the BOI filing requirement would allow accounting and finance professionals to understand their liability in supporting the millions of businesses needing to comply with this filing obligation.

CONCLUDING REMARKS

As BOI reporting regulations move forward, we encourage FinCEN to implement a robust plan for engagement with taxpayers that protects the evolving public interest. FinCEN's plan should give businesses a fair time frame to gain awareness and a reasonable time frame to comply with the requirements. Such a plan would create the necessary transparency for all businesses to feel certain about meeting their filing requirements.

The AICPA appreciates the opportunity to submit this written statement for the record in support of small businesses and the potential impact of the BOI filing requirement.

¹¹ Study.com, Black's Law Dictionary, "[Unauthorized Practice of Law: Definition](#)."