

May 5, 2021

Via eRulemaking Portal

Policy Division
Financial Crimes Enforcement Network
P.O. Box 39
Vienna, VA 22183

**Re: Comments Regarding the Implementation of the Corporate Transparency Act –
Docket No. FINCEN-2021-0005; RIN 1506-AB49**

To whom it may concern:

On behalf of the Electronic Transactions Association (“ETA”), we appreciate the opportunity to share our thoughts on the Department of Treasury’s Financial Crime Enforcement Network (“FinCEN”) advance notice of proposed rulemaking (“ANPRM”) pertinent to the implementation of the Corporate Transparency Act (“CTA”).

ETA supports FinCEN’s ability to gather information that would benefit law enforcement and national security investigations. By modernizing our anti-money laundering regime, it will allow financial institutions to better assist law enforcement in its efforts to detect and deter financial crime and terrorism. Additionally, it will have a profound impact on preventing money laundering, human trafficking, drug smuggling, terrorism financing, fraud, and other illicit activity. The CTA creates a secure beneficial ownership registry of legal entities, held at FinCEN. This would provide law enforcement with needed information to pursue criminals looking to exploit our financial system and strikes the right balance between imposing minimal requirements on small businesses and providing critical information to law enforcement and financial institutions.

There are a number of recommendations which are intended to bring additional clarity and consistency to the ANPRM, to ensure FinCEN receives accurate information and to minimize excess burden on Reporting Companies by filing directly with FinCEN. ETA believes FinCEN has the room to allow money service businesses (“MSBs”) access to the beneficial ownership registry which would help verify information during the agent onboarding process. Additionally, ETA encourages a partnership between FinCEN and the Financial Action Task Force (“FATF”) to establish uniformed standards for international customers.

Who We Are

ETA is the leading trade association for the payments industry, representing over 500 companies that offer electronic transaction processing products and services. ETA’s members include banks, mobile payment service providers, mobile wallet providers, money transmitters and non-bank financial technology companies (“FinTech”) that provide access to credit, primarily to small businesses, either directly or in partnership with other lenders. ETA member companies are creating innovative offerings in financial services, revolutionizing the way commerce is

conducted with safe, convenient, and rewarding payment solutions and lending alternatives – facilitating over \$22 trillion in payments in 2019 worldwide.

Comments

Updating Beneficial Ownership Information Should Not Be Required More Frequently Than Annually

The CTA requires that "a reporting company shall, in a timely manner, and not later than 1 year after the date on which there is a change with respect to any beneficial ownership information. . . , submit to FinCEN a report that updates the information relating to the change." We support a one year period to report beneficial ownership changes. A Reporting Company should have at least one year to submit a report to FinCEN with updated beneficial ownership information if, at the time of the beneficial ownership change it is contemplated that there will be a subsequent beneficial ownership change. Providing one year to submit the report after a beneficial ownership change will, for example, enable the Reporting Company to complete a series of corporate transactions and report its final beneficial ownership changes to FinCEN. Such time frame will also allow beneficial owners to obtain a FinCEN identifier (if requested from FinCEN) with sufficient time prior to being required to report beneficial ownership information to FinCEN.

Further, we agree with the CTA that Reporting Companies should not be required to file a report with FinCEN annually and should only be required to update beneficial ownership information when there is a material change to the beneficial ownership information previously reported, such as a change in the beneficial owners listed on the report. Requiring frequent filings is unnecessarily burdensome to the Reporting Company.

We note that the CTA and ANPRM are not clear regarding the type of information that will need to be updated. Reporting Companies should not be required to submit to FinCEN a report that updates any of the information previously reported. Only material changes to the report previously filed should be updated through the filing of a new report. For example, if a beneficial owner moves and his/her address changes, the Reporting Company should not be required to report that address change to FinCEN. Such information is not a material change to the beneficial ownership information and the government could determine, through alternative means, the current address of the beneficial owner. Address changes may be frequent and requiring filings each time there is an immaterial change to the beneficial ownership information previously reported is burdensome to the Reporting Company, subjects the Reporting Company to penalties if not done properly or timely, and is intrusive to the privacy of the beneficial owners.

FinCEN Should Provide Sufficient Details Regarding the Report to Be Filed with FinCEN

In order for the public to meaningfully comment on the content of the information required to be reported to FinCEN pursuant to the CTA, FinCEN should include a sample report in any future notice of proposed rulemaking published in the Federal Register. Such sample report should include the information FinCEN is requesting from applicants and beneficial owners, the format

in which such information is being requested, and the language of any attestation that applicants will be asked to make, if any.

The Report Should Be Filed Electronically and Directly with FinCEN

Given the privacy and information security concerns regarding the data that is to be reported to FinCEN, FinCEN should require the reports to be filed electronically to FinCEN—either directly through FinCEN's BSA E-Filing database or through another secure database/portal. Additionally, we urge FinCEN to keep the electronic filing mechanism as intuitive and convenient as possible, which includes measures such as specifically allowing beneficial ownership automated registry checks to be done over Application Programming Interface (“API”) to ensure firms are automatically accessible for our members who use API. FinCEN should not require the report to be submitted to FinCEN indirectly through the secretary of state or similar office that formed or registered the Reporting Company, as adding this additional step/party to the information chain of custody introduces data privacy and information security risks.

Allowing MSBs to Access Beneficial Ownership Registry

ETA respectfully believes that MSBs should be included as a type of financial institution to which access to beneficial owner information from FinCEN is made available, provided that certain criteria are met. While MSBs are not covered financial institutions under the customer due diligence rules requiring the identification and verification of beneficial owners of legal entity customers at the time a new account (as defined by the rule) is opened, MSBs may be required by their BSA/AML compliance programs—including in the context of authorized agent onboarding—to identify and verify the beneficial ownership of legal entities. Therefore, financial institutions that are MSBs should be permitted access to beneficial ownership registry information maintained by FinCEN provided that:

- The MSB is licensed as a money transmitter under state money transmissions laws and is acting as a principal MSB in making the request
- The MSB has established written policies and procedures, as part of its BSA-required risk-based AML compliance program, to identify and verify beneficial owners of legal entity customers as required by its customer and (if applicable) authorized agent due diligence programs
- The MSB uses the beneficial ownership registry information solely to verify beneficial ownership information for purposes of meeting the MSB’s obligations under the BSA or Know Your Customer obligations, including, but not limited to, conducting due diligence on agents, counterparties, and customers.

Providing MSBs the ability to access to information in the FinCEN beneficial ownership database information will enhance the ability of MSBs to meet FinCEN’s expectations of due diligence requirements for MSB authorized agents, as well as helping ensure that MSBs are able to develop and maintain robust BSA/AML programs supporting the detection and prevention of financial crimes and terrorism.

FinCEN – FATF Partnership



The Financial Action Task Force (“FATF”) is the global standard-setter for measures to fight money laundering and terrorist financing. In 2003, the FATF became the first international body to set global standards on beneficial ownership. It required countries to ensure that their authorities could obtain up-to-date and accurate information about the person(s) behind companies and foundations and other legal persons. The FATF further strengthened and clarified its beneficial ownership requirements in 2012.

ETA encourages that FinCEN partner with FATF and require countries to ensure that adequate, accurate and timely information on the beneficial ownership of corpora vehicles is available and can be accessed by the authorities in a timely fashion. To the extent that such information is made available, it would help financial institutions to implement the customer due diligence requirements on corporate vehicles including to identify the beneficial owner, identify and manage money laundering/ terrorist financing risks and implement AML/CFT controls based on those risks (including suspicious activity reporting and sanctions requirements). The availability of such information, however, should not exempt financial institutions from their other obligations under CTA and not rely exclusively on such information.

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ETA appreciates the opportunity to provide input on this important issue. If you have any questions, please contact me or ETA’s Senior Vice President of Government Affairs, Scott Talbott at stalbott@electran.org.

Sincerely,



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