CREW

CITIZENS FOR
RESPONSIBILITY &
ETHICS IN WASHINGTON

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

Via online portal

Re: Comment of Citizens for Responsibility and Ethics in Washington in response to *Agency Information Collection Activities; Proposed Collection; Comment Request; Beneficial Ownership Information Reports*, U.S. Financial Crimes Enforcement Network, FINCEN-2023-0002, OMB control number 1506-0076, 88 Fed. Reg. 2760 (Jan. 17, 2023)

Citizens for Responsibility and Ethics in Washington ("CREW") respectfully submits this comment in response to the U.S. Financial Crimes Enforcement Network ("FinCEN") notice and request for comment (the "Notice") issued on January 17, 2023 regarding its proposed report that will be used to collect beneficial ownership information, as required by the Beneficial Ownership Information Reporting Requirements final rule (the "BOI Reporting Final Rule") that was published on September 30, 2022. CREW is a nonpartisan nonprofit committed to government ethics, transparency, and accountability, and appreciates this opportunity to provide its views to FinCEN as you implement the Corporate Transparency Act ("CTA"), Congress's transformative anti-corruption legislation.

FinCEN's Notice proposes the adoption of the form it plans to use to obtain beneficial ownership information from all entities required to file under the CTA. The CTA was designed to fight money laundering and the influx of illegal or corrupt cash into the country by creating a database of all beneficial owners of U.S. corporations and other entities. By creating this central repository, Congress sought to give law enforcement the tools to track previously opaque cash flows to their ultimate beneficiaries. As FinCEN knows, the CTA requires all covered reporting companies to submit their beneficial ownership information to FinCEN unless they are one of a clearly defined category of entities that Congress explicitly exempted.[1] The CTA does not contain any statutory language that would permit FinCEN to expand any of these exemptions—and it certainly does not allow FinCEN to create a regulatory framework that would allow any reporting company to evade disclosure of its beneficial ownership information. Yet, that is precisely what this Notice proposes to do. By including a series of boxes that filers can check to claim that they do not know, or were not able to obtain, the beneficial ownership (or other similar information) about a company applicant, FinCEN's proposed form would create a massive loophole in the CTA's structure.[2]

[1] 31 U.S.C. § 5336(2)(A).

[2] *See*, *e.g.*, Proposed Form Line 34, "Unable to identify all Beneficial Owners (check if you are unable to obtain any required information on one or more Beneficial Owners)," 88 Fed. Reg. 2760, 2764 (Jan. 17, 2023).

As written, the form would allow filers to simply declare that they do not know the identities of the beneficial owners of the corporations they are creating or managing. Not only does the form provide this absurd option, it provides no explanation or criteria for what it means to claim that the information is unknown nor does it require that a filer attest to doing any work, even a de minimis amount such as simply asking a client, to find out who these beneficial owners are. Even if FinCEN had the authority to allow filers to evade the CTA's reporting requirements by expanding the statute's exemptions—which it does not—the way it has drafted this form filers who otherwise could have easily determined their corporation's beneficial owners may choose not to without running afoul of FinCEN's interpretation of the CTA. Agents hired to file may simply not ask about the client's beneficial ownership structure in order to truthfully check the various "unknown" boxes. Entities big enough to create complex corporate structures have the resources to determine who ultimately benefits from their activities—but they also have the resources to pay lawyers to fill out this form and fight disclosure tooth and nail.

The text of the CTA does not permit such a loophole, and Congress did not give FinCEN the authority to create one. There is simply no reasonable interpretation of the CTA that would allow FinCEN to create a form that so thoroughly undermines the law's purpose—and CREW simply cannot believe that this was FinCEN's intent in drafting this form.

CREW thus joins the chorus[3] of[4] experts[5] calling on FinCEN to re-write this form or begin again—this time without giving filers the option to undermine the entire purpose of the CTA.

Sincerely,



Gabriel Wofford Lezra
Federal Policy Manager and Senior Counsel

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[3] *See*, *e.g.*, Comment of Elise Bean, Former Staff Director and Chief Counsel, U.S. Senate Permanent Subcommittee on Investigations, on *Proposed Rule on Beneficial Ownership Information Access and Safeguards, and Use of FinCEN Identifiers for Entities*, Docket No. FINCEN-2021-0005 and RIN 1506-AB49/AB59 (Feb. 13, 2023), calling the new proposed form, "simply the worst government form that I have seen in 40 years of public service."

[4] Sophia Yan, "Purpose "Unknown": Proposed Forms Would Undermine Corporate Transparency Act's Ownership Reporting Regime," *Just Security*, Feb. 15, 2023, https://www.justsecurity.org/85142/purpose-unknown-proposed-forms-would-undermine-corporate-transparency-acts-ownership-reporting-regime/.

[5] Gary Kalman, Executive Director of Transparency International, U.S., "FinCEN's Beneficial Ownership Proposal: Invitation to Evasion," *Global Anticorruption Blog*, Feb. 23, 2023, https://globalanticorruptionblog.com/2023/02/23/fincens-beneficial-ownership-proposal-invitation-to-evasion/.