

November 22, 2023

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

Re: Beneficial Ownership Information Reports and Individual FinCEN Identifier Application

Dear Sir or Madam:

The undersigned organizations appreciate the efforts the U.S. Department of Treasury’s Financial Crimes Enforcement Network (FinCEN) has taken to develop regulations, guidance, and a secure system for beneficial ownership information (BOI) collections. In particular, we appreciate FinCEN for responding to our prior recommendations¹ by agreeing to:

- a. Establish an appropriate technology-enabled portal for reporting companies and their intermediaries to furnish BOI to FinCEN, and
- b. Enable batch upload to streamline broad-based compliance and adoption.²

On September 29, 2023, FinCEN updated its [FAQs](#) to incorporate these changes that will help provide simple reporting mechanisms and allow intermediary partners to support reporting companies to comply more effectively and accurately, furthering the goals of the Corporate Transparency Act (CTA).

We note that as the January 1, 2024, CTA implementation date approaches, third-party service providers continue to await Application Programming Interface (API) specifications that will allow intermediaries to assist reporting companies to submit BOI reports. We recommend that FinCEN provide API technical specifications as soon as possible and allow third-party service providers to assist individuals to obtain, update, and correct a FinCEN identifier via API submission portal. Further, we urge FinCEN to ensure that the rulemakings³ implementing the CTA and any subsequent guidance provide additional clarity on the responsibility of reporting companies to comply.

¹ See coalition comment letter, “[Beneficial Ownership Information Reporting Requirements and Collections; Docket Number FINCEN-2023-0002 and OMB control number 1506-0076](#),” submitted August 28, 2023.

² See FinCEN FAQ Item N, “[Beneficial Ownership Information Reporting: Frequently Asked Questions](#),” issued September 29, 2023.

³ FinCEN, “[Beneficial Ownership Information Reporting](#).”

BACKGROUND

BOI Reporting

The Corporate Transparency Act requires FinCEN to collect BOI from millions of entities, mainly startups and other small businesses. The purpose of the CTA is to aid in law enforcement's efforts to combat illicit financing and its ill effects by increasing transparency into the beneficial owners of certain corporate entities. To accomplish this objective, the rules require companies to report their beneficial owners at the time of formation and periodically thereafter. Under the rule, a beneficial owner includes any individual who, directly or indirectly, either 1) exercises substantial control over a reporting company, or 2) owns or controls at least 25% of the ownership interests of a reporting company.⁴

The new CTA requirements begin January 1, 2024, and business entities subject to the rules will face significant new reporting and record-keeping obligations.

FinCEN Identifier

FinCEN issued the BOI Reporting Requirements final rule on September 30, 2022⁵ and finalized the rule on the use of FinCEN identifiers for reporting BOI on November 8, 2023.⁶ These rules set forth various requirements for individuals and entities that seek to obtain a FinCEN identifier, which can be used in certain circumstances as a substitute for other information required to be reported. Specifically, a "FinCEN identifier" is the unique identifying number assigned by FinCEN to an individual or reporting company upon request. Individuals are not required to obtain FinCEN identifiers. To receive an identifier, the final rules specify that individuals must make a request by filing an electronic application with FinCEN that contains the same four pieces of identifying information as would be required in a BOI report—the individual's full legal name, date of birth, current residential or business street address, and a unique identifying number from an acceptable identification document (*e.g.*, a passport). Individuals are also required to submit updates of their identifying information as needed going forward.

RECOMMENDATIONS

We recommend that Treasury and FinCEN:

- 1) Prioritize providing API specifications that will allow intermediaries to assist reporting companies to submit BOI reports prior to the January 1, 2024, CTA implementation date,
- 2) Provide guidance allowing third-party service providers to assist individuals to obtain, update, and correct a FinCEN identifier via API submission portal, and
- 3) Provide clarity on certification requirements and obligations when CTA reports are filed by third-party service providers on behalf of reporting companies.

⁴ FinCEN, "[Beneficial Ownership Information Reporting Rule Fact Sheet](#)," September 29, 2022.

⁵ [87 FR 59498](#) (September 30, 2022).

⁶ [88 FR 76995](#) (November 8, 2023).

ANALYSIS

- 1) *Prioritize providing API specifications that will allow intermediaries to assist reporting companies to submit BOI reports prior to the January 1, 2024, CTA implementation date.*

FinCEN's updated FAQs provide that CTA reporting will include an E-Filing system and/or an API, with technical specifications for the API to be "made available at a later date."⁷ Providing simple reporting mechanisms and allowing intermediary partners (*i.e.*, lawyers, agents and providers) to support reporting companies promotes broader compliance in an efficient and timely manner.

We recommend that FinCEN provide technical specifications for the API as soon as possible, prior to the January 1, 2024, CTA reporting implementation date—to allow third-party service providers ample time to develop compatible tools that will assist in furnishing data into the FinCEN database on behalf of reporting companies.

- 2) *Provide guidance allowing third-party service providers to assist individuals to obtain, update, and correct a FinCEN identifier via API submission portal.*

Certain intermediaries often have connection points to a large universe of reporting companies that include the maintenance of corporate records and information relevant to beneficial ownership reporting, including updates and changes. These intermediaries can establish processes within their existing platforms for reporting companies to report their beneficial ownership information efficiently and effectively. We recommend that individuals who wish to obtain a FinCEN identifier may:

- a. Apply for a FinCEN identifier through third-party service providers and this information sent via an API submission portal,
- b. Update or correct certain information associated with their FinCEN identifier through third-party providers that will submit any change in information via a submission portal, and
- c. Select to automatically be issued a FinCEN identifier that can be used for future BOI reports when submitting a BOI report through a third-party service provider.

By allowing intermediaries to leverage their existing records and information to assist individuals with FinCEN identifier requests, Treasury and FinCEN would be helping specific entities comply with the new regulations, reduce costs and burdens, and drive broader compliance—more effectively achieving the CTA's goals.

- 3) *Provide clarity on certification requirements and obligations when CTA reports are filed by third-party service providers on behalf of reporting companies.*

Under the reporting rule "each person filing such report... shall certify that the report or application is true, correct and complete."⁸ In its latest FAQs, FinCEN indicated that reporting companies may

⁷ *Ibid.*

⁸ [87 FR 59498](#) (September 30, 2022).

use third-party service providers to submit beneficial ownership information reports and that third-party service providers will have the ability to submit the reports via FinCEN's E-Filing system and/or an API.⁹ This recent guidance is very helpful but creates questions concerning liability and whether the reporting company will remain responsible for ensuring that any reports filed on their behalf by a third-party service provider are true, correct, and complete. We recommend that FinCEN clarify that reporting companies must continue to ensure that any reports filed on their behalf are true, correct, and complete, even when the reports are filed using a third-party service provider. This guidance would provide certainty concerning any liabilities for reporting violations that could arise from a filing, and it would incentivize the engagement of more intermediaries in supporting broad and effective compliance.

Our coalition appreciates FinCEN's diligent work implementing the Corporate Transparency Act to combat illicit financing and its impact. We welcome the opportunity to discuss these issues further. If you have any questions, please feel free to contact Amy Miller, Director of Public Policy at Carta, at (610) 742-2612 or amy.miller@carta.com or Anthony Cimino, Head of Policy and Regulatory Affairs at (202) 734-9592 or anthony.cimino@carta.com.

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⁹ FinCEN, "[Beneficial Ownership Information Reporting, Frequently Asked Questions](#)," September 29, 2022.