



October 30, 2023

Policy Division  
Financial Crimes Enforcement Network  
(Docket Number FINCEN-2023-0014  
OMB Control Number 1506-0076)  
PO Box 39  
Vienna, VA 22183

**RE: Beneficial Ownership Information Reporting Deadline Extension for Reporting Companies Created or Registered in 2024 (Docket Number FINCEN-2023-0014; OMB Control Number 1506-0076)**

Dear Sir/Madam:

The AICPA, and the many organizations enumerated at the end of this letter, appreciate the efforts by the Financial Crimes Enforcement Network (FinCEN) to extend the filing deadline for certain beneficial ownership information (BOI) reports. However, the proposed rulemaking is extremely limited in scope and offers relief to a limited number of filers in the first year of implementation of the new filing requirement. As such, we recommend that FinCEN extend the deadline to one year and expand the applicability of the deadline to include not only new entities created in 2024 but all entities created thereafter as well as entities making updates or corrections to their original filings.

**Overview**

The Corporate Transparency Act (CTA), enacted on January 1, 2021, and administered by FinCEN, 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, 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.”<sup>1</sup>

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 taxpayer identification number, 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

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

company”<sup>2</sup> 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.”<sup>3</sup>

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.

In total, the CTA allows for 23 types of entities to be exempt<sup>4</sup> from the BOI reporting requirement — many of the exempt entities are already regulated by federal or state governments and already have BOI filing requirements.

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.

The CTA also provides for steep 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.

On September 28, 2023, FinCEN [proposed](#) to amend the BOI reporting rule to extend the filing deadline for entities created or registered during 2024 from 30 days to 90 days. The intention is to give those entities additional time to understand their new reporting obligation and gather the information requested by the BOI reporting requirement.

## **Recommendation**

To have a meaningful impact on small businesses, we recommend that FinCEN extend the deadline beyond the proposed 90 days to one year. Additionally, the scope of the proposed rulemaking should be expanded to include not only new entities created in 2024, but all entities created thereafter and entities making updates or corrections to their original filings.

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<sup>2</sup> *Id.*

<sup>3</sup> *Id.*

<sup>4</sup> FinCEN Question C.2., “[Are there exemptions from the reporting requirement?](#).”

## **Analysis**

In order to achieve compliance of any policy, there needs to be equity and fairness, certainty, simplicity and transparency.<sup>5</sup> The proposed rulemaking to extend the filing requirement from 30 days to 90 days for only entities created in 2024 does not embody these concepts. Furthermore, penalties should exist for the purpose of encouraging voluntary compliance and not to punish the slightest misunderstanding of reporting requirements.<sup>6</sup>

### *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. For example, the National Federation of Independent Business surveyed their members asking, “How familiar are you with this new regulation?”<sup>7</sup> The results reflected that 90% of the members were not at all familiar with only 1% being very familiar.<sup>8</sup>

Regardless of FinCEN’s activities to raise awareness, their efforts remain ineffective and most businesses are unaware of this filing requirement. Out of concern for not only taxpayers who seek professional financial advice but for all small businesses, we urge FinCEN to considerably extend the filing deadline for new entities and to expand the scope of the proposed regulation to include entities updating or correcting their original BOI filing. Without awareness, businesses, and in particular small businesses, are bound to miss the deadline for their BOI filing requirement.

### *Burdens on Small Businesses*

FinCEN has woefully underestimated that there will be 32,800,422 burden hours for entities to complete the filing in the first year (approximately 1 hour per entity) 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, including something as simple as an expired driver’s license, 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. Given the information proposed to be collected by FinCEN is

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<sup>5</sup> AICPA, “[Tax Policy Concept Statement 1, Guiding principles of good tax policy: A framework for evaluating tax proposals](#),” 2017.

<sup>6</sup> AICPA, “[Report on Civil Tax Penalties: The Need for Reform](#),” April 11, 2013.

<sup>7</sup> NFIB Research Center, “[Banking Survey, Part II](#),” August 2023.

<sup>8</sup> *Id.*

much broader than intended, in some cases, small businesses will encounter difficulty identifying information and to comply, these entities may require professional advice requiring more than 30 days to gather the accurate information to file.

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 or the proposed 90-day filing deadline.

### *Steep and Burdensome Taxpayer Penalties*

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.’”<sup>9</sup> 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.

An extended period for all new entities to file their original BOI report and for existing entities to update or correct their original report would allow small businesses to avoid the steep penalties and comply with this new filing requirement in a timely manner.

### **Concluding Remarks**

FinCEN should give all businesses a fair time frame to gain awareness and a reasonable time frame to comply with the BOI requirements. If FinCEN extended the filing deadline to one year and expanded the applicability of the deadline to include not only new entities created in 2024, but all entities created thereafter as well as all entities making updates or corrections to their original filings, FinCEN would create the necessary transparency for all businesses to feel certain about meeting their filing requirements.

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<sup>9</sup> Department of Justice Archives, “[910. Knowingly and Willfully](#),” January 21, 2020.

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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, AICPA Director — Congressional and Political Affairs at 202-434-9219, or [Kate.Kiley@aicpa-cima.com](mailto:Kate.Kiley@aicpa-cima.com); or Melanie Lauridsen, AICPA Vice President — Tax Policy & Advocacy, at (202) 434-9235 or [Melanie.Lauridsen@aicpa-cima.com](mailto:Melanie.Lauridsen@aicpa-cima.com).

Sincerely,



Susan S. Coffey, CPA, CGMA  
Chief Executive Officer – Public Accounting

Additional organizations supporting this comment letter:

Alabama Society of CPAs  
Alaska Society of CPAs  
Arizona Society of CPAs  
Arkansas Society of CPAs  
California Society of CPAs  
Colorado Society of CPAs  
Connecticut Society of CPAs  
Delaware Society of CPAs  
Greater Washington Society of CPAs (DC)  
Florida Institute of CPAs  
Georgia Society of CPAs  
Guam Society of CPAs  
Hawaii Society of CPAs  
Idaho Society of CPAs  
Illinois CPA Society  
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Iowa Society of CPAs  
Kansas Society of CPAs  
Kentucky Society of CPAs  
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Rhode Island Society of CPAs  
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