



VIA ELECTRONIC SUBMISSION

May 5, 2021

Ms. AnnaLou Tirol  
Deputy Director  
Financial Crimes Enforcement Network  
U.S. Department of the Treasury  
P.O. Box 39  
Vienna, VA 22183

**Re: Beneficial Ownership Information Reporting Requirements; FINCEN-2021-0005; RIN 1506-AB49**

Dear Ms. Tirol:

Associated Builders and Contractors hereby submits the following comments to the U.S. Department of the Treasury's Financial Crimes Enforcement Network in response to the above-referenced advance notice of proposed rulemaking published in the *Federal Register* on April 5, 2021, at 86 Fed. Reg. 17557.

### **About Associated Builders and Contractors**

ABC is a national construction industry trade association representing more than 21,000 members. ABC and its 69 chapters help members develop people, win work and deliver that work safely, ethically and profitably for the betterment of the communities in which ABC and its members work. ABC's membership represents all specialties within the U.S. construction industry and is comprised primarily of firms that perform work in the industrial and commercial sectors. Moreover, the vast majority of our contractor members are classified as small businesses. Our diverse membership is bound by a shared commitment to the merit shop philosophy in the construction industry, which is based on the principles of nondiscrimination due to labor affiliation and the awarding of construction contracts through open, competitive bidding based on safety, quality and value.

### **Background**

On Jan. 1, 2021, Congress enacted into law the Corporate Transparency Act, which establishes a new framework for the reporting, maintenance and disclosure of beneficial ownership information in order to better enable critical national security, intelligence and law enforcement efforts to counter money laundering, the financing of terrorism and other illicit activity, among other items.<sup>1</sup>

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<sup>1</sup> 86 Fed. Reg. at 17559.

ABC, along with a coalition of small business organizations, submitted a letter<sup>2</sup> to Congressional leadership on Aug. 12, 2020 expressing concerns on the amendments incorporating the CTA into S. 4049, the National Defense Authorization Act for Fiscal Year 2021,<sup>3</sup> stating the enactment of the CTA would decrease privacy protections and slow the economic recovery of Main Street.

On April 5, FinCEN issued an advance notice of proposed rulemaking seeking public input on how best to implement the reporting requirements of the CTA, as well as the CTA's provisions regarding FinCEN's maintenance and disclosure of reported information.<sup>4</sup>

### **Summary of ABC's Comments in Response to the Treasury's Notice**

The framework prescribed by the CTA will require millions of small businesses, including nearly every employer with 20 or fewer employees, to report to FinCEN certain personal information of their beneficial owners and update that information periodically throughout the life of the business. America's small businesses—which include most of ABC's members—are typically not staffed or well-equipped to understand and comply with reporting obligations similar to those under the CTA. However, per the CTA, failure to comply can result in significant fines and imprisonment for these small business owners. ABC urges FinCEN to consider the following concerns and suggestions as it undertakes its rulemaking process:

#### **Provide Clear, Concise Guidance on the Reporting Obligations of Small Businesses**

Section (e)(1) of the CTA requires the U.S. treasury secretary to “take reasonable steps to provide notice to persons of their reporting obligations,”<sup>5</sup> and ABC urges FinCEN to offer clear and continuous guidance that informs covered entities of their reporting duties and deadlines.

As noted by ABC during the legislative process surrounding the CTA, many of ABC's members and construction businesses throughout the country are likely unfamiliar with FinCEN, and will likely not receive information about the new reporting requirements without a directed outreach and education effort by FinCEN and the treasury department. We suggest that the treasury department be prepared to undertake a robust outreach program to inform small business owners of their new obligations, including making available to small business owners user-friendly materials that explain what a reporting company is and what it must report and provide step-by-step instructions to aid with compliance. Such a program will be critical for honest, hard-working small business owners to avoid unnecessary and undeserved monetary or criminal penalties as a result of their limited resources and unfamiliarity and inexperience with regulations of this sort.

#### **Establish a Secure Process to Collect and Store the Residential or Business Address and Other Private Information of Beneficial Owners and Applicants**

The requirement that reporting companies disclose information regarding their beneficial owners and applicants imposes unnecessary invasions of privacy and related burdens on the parties

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<sup>2</sup> <https://assets.nfib.com/nfibcom/FY-2021-NDAA-Conference-Beneficial-Ownership-Letter-FINAL.pdf>.

<sup>3</sup> <https://www.congress.gov/bill/116th-congress/senate-bill/4049>.

<sup>4</sup> 86 *Fed. Reg.* at 17557.

<sup>5</sup> 31 U.S.C. 5336(e)(1).

involved. Currently, small businesses are generally not required to disclose information regarding their beneficial ownership, except to financial institutions with whom they bank. The financial institutions must hold that information securely and only disclose it to law enforcement under certain circumstances.

While the notice of proposed rulemaking indicates the beneficial ownership disclosure requirements under the CTA would “protect vital U.S. national security” and “protect interstate and foreign commerce,”<sup>6</sup> among others, thousands of law enforcement and intelligence officials, including foreign governments, would be able to access this information via requests through yet-to-be-defined protocols. ABC suggests FinCEN address these privacy concerns during its rulemaking process by establishing safeguards for secure data collection and storage and limiting access to such data to individuals or agencies that have demonstrated a need to know in order to protect these businesses from unauthorized disclosure or misuse of this private information. In addition, ABC urges FinCEN to ensure that information collected through these beneficial ownership reporting requirements is exempt from disclosure under the Freedom of Information Act and any similar state law.

### **Expand Exemptions From the Definition of “Reporting Company”**

ABC encourages the secretary of the treasury, in consultation with the U.S. attorney general and secretary of the U.S. Department of Homeland Security, to establish additional, clear, self-executing exemptions from the reporting requirements for businesses that are not highly useful in national security, intelligence and law enforcement agency efforts to detect, prevent or prosecute “money laundering, the financing of terrorism, proliferation financing, serious tax fraud” or other crimes.<sup>7</sup>

Many ABC member companies have been well-established businesses in their communities for years or, in some instances, decades. An exemption from this burdensome reporting requirement should be provided for businesses of such standing in the community and history of work. ABC welcomes the opportunity to discuss with FinCEN effective exemptions that reduce the burden on organizations conducting legitimate business operations while achieving the goal of the CTA of uncovering illicit activity.

### **Provide a Clear Definition for “Substantial Control”**

ABC encourages FinCEN to clarify the term “substantial control” as it is used in the CTA’s definition of beneficial owner. ABC suggests that FinCEN to adopt an interpretation of substantial control similar to that from the control prong of its customer due diligence rule: “a single individual with significant responsibility to control, manage or direct” the business in question.<sup>8</sup> ABC believes this clear definition would relieve small businesses from the burden of determining which individuals other than owners of a 25% or greater interest may exercise “substantial control,” while also achieving the goal of the CTA to enhance transparency and provide law enforcement with an individual who is highly aware of the business’ operations.

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<sup>6</sup> 86 *Fed. Reg.* 17559 – 17560.

<sup>7</sup> 86 *Fed. Reg.* 17558.

<sup>8</sup> 81 *Fed. Reg.* 29409.

## **Treasury Should Establish Compliance Assistance Efforts for Businesses Acting in Good Faith to Comply With the Reporting Requirements**

Construction industry employers are already confronted with a bewildering maze of conflicting local, state and federal reporting requirements, and those with 20 or fewer employees or annual revenues of \$5 million or less are unlikely to have dedicated compliance professionals to aid in dealing with these new CTA reporting requirements. Hiring outside assistance will be an additional cost eating into already thin operating margins. While the CTA contains a safe harbor provision and allows reporting businesses to amend previously submitted inaccurate information, ABC suggests that the department establish a compliance assistance system for businesses making reasonable efforts to fulfill their obligations. Examples include a telephone hotline, email or other form of electronic communication, and/or a resources page on the treasury department website with frequently asked questions and other materials designed to assist these businesses with their beneficial ownership reporting requirements.

As noted above, the lack of familiarity many of these small construction businesses have with FinCEN or with any requirement like those in the CTA will put them at an even greater disadvantage for identifying, understanding and successfully completing filings associated with these new requirements. In connection with the robust outreach and education program discussed above, a compliance assistance system will help avoid unintended consequences of these new rules and ensure businesses have the resources they need to comply.

### **Conclusion**

ABC urges FinCEN to consider the concerns and suggestions outlined above as the agency works through the rulemaking process. ABC also encourages FinCEN to work with the business community during this process to ensure the intent of the CTA is accomplished while also placing the smallest compliance burdens and penalties as possible on America's backbone, its small businesses.

Respectfully submitted,



Ben Brubeck  
Vice President of Regulatory, Labor and State Affairs