

House Financial Services Committee

*Subcommittee on National Security, Illicit Finance, and International Financial Institutions*

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# Potential Consequences of FinCEN's Beneficial Ownership Rulemaking

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Chairman Luetkemeyer, Ranking Member Beatty, and distinguished members of the committee, thank you for the opportunity to submit this statement for the record. I am Elaine Dezenski, senior director and head of the Center on Economic and Financial Power at the Foundation for Defense of Democracies (FDD). CEFP develops and promotes strategies and policies to bolster an effective economic security framework that deters America's adversaries and protects U.S. national security objectives. With rogue states — including China, Russia, Iran, and North Korea — threatening the integrity of the global financial system and increasingly employing offensive economic tools to challenge American interests, CEFP's cutting-edge research is aimed at sharpening America's financial toolkit to encourage transparency and economic growth while preserving U.S. dollar primacy.

Passing the Corporate Transparency Act (CTA) legislation was perhaps the most important step in strengthening the U.S. financial system's integrity since the passage of the Bank Secrecy Act (BSA) in 1970 and the Patriot Act after the tragic events of 9/11. We are now at a critical juncture in CTA rulemaking. Congress has revisited both the BSA and Patriot Act over the years to address loopholes affecting their efficacy and enforcement. The CTA's mandate for the creation of a beneficial ownership registry fills a key loophole. Creating that registry will be a complex undertaking, but neither the administration nor Congress should let the difficulty of the task derail its implementation.

The establishment of a U.S. beneficial ownership registry through the CTA will substantially reduce the opacity in the corporate formation process and give law enforcement a valuable new tool. Determining beneficial ownership allows authorities to identify foreign adversaries, [tax](#) and sanctions evaders, [organized crime](#), [kleptocrats](#), and other bad actors that have misused corporate formation tools to hide stolen money, fund [lavish lifestyles](#) abroad, and even infiltrate the [U.S. defense industrial base](#).

Preserving and strengthening U.S. national security and economic security will be increasingly reliant on sanctions, export controls, protecting intellectual property, and rooting out adversaries operating on U.S. soil. The United States must also protect its investment abroad, counter rogue actors using digital currencies, and counter large-scale threats to Americans such as the fentanyl epidemic. In *all* these cases — and many more — hidden beneficial owners control the movement of ill-gotten gains through opaque U.S. shell corporations. The CTA constitutes an essential response to these issues, but its effectiveness depends on thorough implementation. It is ironic, and frankly, perplexing, that Washington would spend massive sums implementing and enforcing sanctions against Moscow, for example, while simultaneously allowing [loopholes](#) in our own financial system, like the legality of anonymous shell companies, to undermine their effect. In the same vein, we rightly commit substantial law enforcement and public safety resources to combat the opioid epidemic while simultaneously allowing [money laundering networks](#) operating in the United States to use anonymous shell companies to easily hide the proceeds of fentanyl trafficking, which devastates communities around the country.

But it's not just about what happens at home. Rogue actors continue to pillage and destabilize societies on every continent, and the impact is often on the most vulnerable citizens in fragile economies. Working with partners and allies around the world to stop the massive flow of illicit funds from the poorest of countries to safe havens in the Western world is increasingly critical to

stabilizing democratic governance and protecting citizens everywhere. **Without beneficial ownership information, it is nearly impossible to follow these money trails.** With less than half of countries fully compliant with the Financial Action Task Force’s anti-money laundering standards, the creation of robust and effective beneficial ownership registries, including here in the United States, can and will reinforce lagging participation and enforcement in global financial crime compliance.

Moreover, global illicit financial flows work against the substantial and growing investments that the United States, along with its allies and partners, are making in democracy-building, global infrastructure development financing and equity investment, and other programs to bring about positive economic change around the world. Once again, we are undermining our own efforts and blunting the impact of U.S. tax dollars abroad by failing to clean up our own legal and financial loopholes. If the United States is serious about winning the hearts and minds of citizens, offering real alternatives to China’s corruption-driven Belt and Road Initiative, and showing the benefits of democratic principles and the rule of law, there is no alternative to effectively implementing the Corporate Transparency Act’s changes to U.S. corporate reporting and financial due diligence. Effective implementation of the CTA will rightly align America with other countries that seek to root out the influence of kleptocrats, drug dealers, and cybercriminals.

The U.S. Department of Treasury’s Financial Crimes Enforcement Network (FinCEN) has primary responsibility for devising these new rules. Yet it is safe to say that FinCEN does not possess the inherent institutional capacity or structure that would allow it to take on CTA rulemaking effectively. As in the cases of other transformational regulatory and enforcement actions implemented after 9/11, CTA rulemaking has been fraught with technical difficulties. These include addressing the legal liabilities of financial institutions, complex database design, engaging effectively with state, local and tribal law enforcement, and building deeper institutional capacity to carry out effective enforcement. The reality is that this rule is testing the U.S. government’s capacity, not solely FinCEN’s, to devise, implement, and enforce changes in a complex system.

However, rather than use this difficulty as an excuse to delay these reforms, it is time to deepen the partnership between the legislative and executive branches in support of CTA rulemaking and implementation, helping FinCEN to transform itself. Adopting a post-9/11 mindset is needed, eliminating unnecessary “noise” in the policy process so the government can work in a bi-partisan fashion to implement the most effective and quickest plan for adoption of the beneficial ownership registry.

These steps should include:

- Reaffirming this subcommittee’s support for the CTA;
- Appointing a permanent head of FinCEN as soon as possible;
- Providing FinCEN with the necessary funding, hiring authority, and technological improvements to support a state-of-the-art registry design and implementation;

- Holding FinCEN accountable to a realistic schedule for rule issuance and continuous monitoring of the CTA's implementation; and
- Giving FinCEN the flexibility to revise and strengthen those rules as needed and based on stakeholder feedback.

The adoption of a U.S. beneficial ownership registry is a transformative step in the fight against kleptocracy and global financial crime; it will become a critical part of safeguarding the U.S. financial system and holding illicit actors accountable. The most challenging part of establishing a U.S. beneficial ownership registry was passing the law to require it. Congress and the administration should now move forward together to address remaining roadblocks so that future generations will simply ask: why was this not done sooner? Thank you for the opportunity to submit this statement.