

U.S. House of Representatives

Committee on Small Business

**Full Committee Hearing: “Under the Microscope: Examining FinCEN’s Implementation of the
Corporate Transparency Act”**

Testimony of Timothy M. Opsitnick

April 30, 2024



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Chairman Williams, Members of the Committee, thank you for holding today’s hearing on the implementation of the Corporate Transparency Act, or CTA. My name is Tim Opsitnick, and I am the part owner of several small businesses, including Opsitnick, LLC and On Call Cyber, LTD., and serve on Boards for several nonprofits and small businesses. I am also the Executive Vice President of TCDI, a business focused on ancillary legal services, computer forensics, and cybersecurity. I am grateful to be here today on behalf of the National Small Business Association testifying on an issue that is truly critical to the entire small business community.

Your focus on this issue is sincerely appreciated, as millions of Americans face monumental regulatory, legal, and financial hurdles thanks to FinCEN’s scattershot approach to rulemaking.

Before I begin, I’d like to address the elephant in the room. As you may have seen in the news recently, NSBA is involved in active litigation over the constitutionality of the CTA. I am not here to address that case today, but rather to speak to some of the specific impacts the law has had on the small businesses I work with regularly, and to shed light on the experiences that entrepreneurs and main street business leaders are having in the current regulatory environment.

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In addition to my own business, I am active in a number of small business groups and chambers at the federal, state, and local level. Through these groups and my advisory work, I have been fortunate to make connections with small businessowners across a variety of industries, locations, and stages of development, from multigenerational family business owners pushing the top end of the “small business” definition, all the way down to first-time entrepreneurs still working out of their homes, garages, and apartments. In my experience, the latter group occupies a significantly more fragile section of the small business economy, where every minute and every dollar can be critical to the survival of your business from one day to the next. They can least afford to spend significant time and money on regulatory compliance, and have the least awareness of complicated federal regulatory frameworks, and yet paradoxically are the first businessowners impacted by the CTA.

As of January 1st, any new entity formed or doing business in the United States that employs 20 or fewer individuals in the U.S., and reports less than \$5,000,000 in gross receipts or sales that does not fall into any of the exemption categories (including tax-exempt nonprofits, banks, and other sophisticated financial professions) must report its beneficial owners within 90 days of formation to the Department of the Treasury’s Financial Crimes Enforcement Network, or FinCEN. This places the first reporting burden under the CTA directly onto the fledgling entrepreneurs who are least able and least aware, and therefore least prepared to comply. Moreover, the regulations are unclear, even when condensed and theoretically simplified for broad public consumption.

Specifically, I’d like to draw the Committee’s attention to FinCEN’s 57-page Small Entity Compliance Guide, as well as the 45-page PDF covering “Beneficial Ownership Information

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Reporting Frequently Asked Questions.”^{1,2} A first-time entrepreneur looking to open a coffee shop, for example, must push through these 102 pages of explanatory language to understand their reporting burden under this statute. Given permitting, licensure, construction and other delays, it’s entirely possible that our theoretical aspiring barista would have to read, understand, and act on over 100 pages of guidance before they serve a single cup to a customer; all under the threat of criminal sanctions. Distressingly, the concerns don’t stop once a business has filed its BOI.

FinCEN has been in the news proudly declaring that hundreds of thousands of BOI reports have been filed. That news, however, should be as concerning, as small business owners lack awareness of the requirement to file. When I network in the small business groups and chambers where I belong, I am greeted by blank stares when the CTA and the obligation to file is discussed.

Compounding problems like the limited educational outreach of government, the lack of clarity in the regulatory process, and strong liability concerns, small businesses also face a dearth of expert advisors able—and willing—to interpret the regulation for them, or help them file their BOI. In January, Secretary Yellen went on record saying that “[w]e’re also making reporting as easy as possible for the small businesses at the heart of the American economy so that the benefits for small businesses, and for all of us, will far outweigh what should be a relatively straightforward effort to comply. The reporting process is simple, quick, and free. A small business shouldn’t need

¹ Financial Crimes Enforcement Network. “Small Entity Compliance Guide: Beneficial Ownership Information Reporting Requirements.”

https://www.fincen.gov/sites/default/files/shared/BOI_Small_Compliance_Guide.v1.1-FINAL.pdf.

² Financial Crimes Enforcement Network. “Beneficial Ownership Information Frequently Asked Questions.”

<https://www.fincen.gov/sites/default/files/shared/BOI-FAQs-QA-508C.pdf>.

a certified public accountant or lawyer.”³ As a small business owner, and a lawyer, I completely disagree. For example, in determining who a small business owner must list as a beneficial owner, the small business owner must determine not only who is an owner in the traditional sense, but also those who have “substantial control” over the business. Lawyers do not understand the meaning of “substantial control”—whose definition under the Corporate Transparency Act does not appear in any other statute or regulation—let alone the aspiring coffee shop owner we spoke about. The term would make for a good law school discussion. Small businesses rely on certainty and clarity when it comes to navigating the maze of regulations that affect their operations, and the Corporate Transparency Act offers neither.

As to the financial and other burdens, a recent survey of small businesses conducted by NSBA revealed that owners are anticipating average compliance costs of nearly \$8,000 in the first year alone.⁴ Nearly half of the businesses surveyed also reported that they intend to rely on outside advice (often from multiple professionals) in the compliance process, with 71% of those respondents intending to lean on their accountants, and 44% planning to utilize their attorneys, whether in coordination or separately. This makes sense; given the threat of hefty fines and even jail time, how many small businesses are willing to roll the dice and tackle compliance on their own?

³ Janet L. Yellen (United States Secretary of the Treasury). “Remarks by Secretary of the Treasury Janet L. Yellen at the Financial Crimes Enforcement Network – As Prepared for Delivery.” <https://home.treasury.gov/news/press-releases/jy2017>.

⁴ National Small Business Association. “The Corporate Transparency Act: What it Means for Small Business.” https://www.nsba.biz/_files/ugd/fec11a_16ae585b72d446fe802816712bab9beb.pdf.

Unfortunately, many small businesses are discovering that their accountants and lawyers are woefully unprepared to offer compliance advice regarding the Corporate Transparency Act. Only recently have continuing legal education programs for these professionals begun to address the lack of preparation or education. The attorney list-serves where information is shared are alight with conversations about what to advise their small business clients—the typical advice that I see is wait until the last minute to file, not exactly the answer a small business owner wants to hear.

I mentioned earlier, when I network with small business owners, they are completely unaware of the requirement to file. Furthermore, I do not see any of our local chambers educating the small business community, and when I brought the subject up in a recent chamber board meeting I was asked, “Tell us again, what is the Corporate Transparency Act?”

As I mentioned, part of my professional practice includes cybersecurity and data privacy matters. With that in mind, let me be the latest to stress – we do not know that the FinCEN database is secure, and given the volume and sensitivity of data it is expected to hold, that is just unacceptable. We further know that the information and/or access to the database will be shared with many others. In addition, as I have previously discussed, the related information will be provided to our accountants and lawyers, and other professionals, assisting us with filing and updating. Each and every time that a small business owner shares their privacy information, the risk that such information will be misused and lost to the dark web in a data breach significantly increases. Indeed, FinCEN’s own website states, “Alert: FinCEN has learned of fraudulent attempts to solicit information from individuals and entities who may be subject to reporting

requirements und the Corporate Transparency Act.”⁵ According to NSBA research, the average cost to remedy a small business data breach is \$15,297.⁶ In my experience, this is a very conservative estimate. I have seen small middle-market companies face costs over \$100,000 in data breach scenarios, whether due to ransomware, attorneys’ fees, security professionals, or simply reputational damage as is so often a part of the fallout from these events. Regardless—this large average figure could cripple many small businesses, who are much more cash-flow-sensitive than their large counterparts. According to testimony this Committee has heard previously, small businesses cannot afford to be vulnerable—the majority of small businesses that suffer a breach will close their doors within six months.⁷

Even if the federal government is able to fully secure this sensitive information—far from a guarantee given its track record of leaks and breaches in recent years—the Corporate Transparency Act will necessitate the sharing of passports, Social Security Numbers, and other private data between covered individuals and filers. It’s yet another example of how this ill-conceived law puts law-abiding small businesses at significant risk.

In conclusion, I’d like to reiterate the small business community’s thanks to the Committee for its attention to these issues, and I look forward to answering any questions.

⁵ Financial Crimes Enforcement Network. “BOI Ownership Information.” <https://www.fincen.gov/boi>.

⁶ National Small Business Association. “The Corporate Transparency Act: What it Means for Small Business.” https://www.nsba.biz/files/ugd/fec11a_16ae585b72d446fe802816712bab9beb.pdf.

⁷ Dr. Jane LeClair (Chief Operating Officer, National Cybersecurity Institute at Excelsior College). “Statement for the Record Before the United States House of Representatives Committee on Small Business, *Small Business, Big Threat: Protecting Small Businesses from Cyber Attacks*.” <https://docs.house.gov/meetings/SM/SM00/20150422/103276/HHRG-114-SM00-20150422-SD003-U4.pdf>