

Prepared Remarks of FinCEN Director Andrea Gacki During ACAMS: The Assembly (delivered virtually)

October 03, 2023

**Andrea Gacki, Director
FinCEN**

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Good morning. I am honored to join you today. I would like to thank Kieran Beer for inviting me, and to also thank Justine Walker, who has skillfully guided me in previous discussions at ACAMS while I was Director of OFAC. I look forward to my conversation with Justine in a few minutes, but I wanted to take a few minutes here at the beginning to speak with you all.

It's wonderful to be in such familiar company, speaking to you now as the new Director of FinCEN, a role I began only about a month ago. I have spent my first weeks at FinCEN getting to know the team better and getting up to speed on our work across the bureau.

Even though I have worked closely with FinCEN for many years, I have still been surprised by the full scope of FinCEN's remit. From alerting consumers to fraudulent schemes, to working with financial institutions to ferret out sanctions and export control evasion schemes, to providing law enforcement agencies with critical financial intelligence—it is a wide range of critical work streams. And FinCEN is a small agency, particularly given the breadth of its mandate.

I am thankful to my team for the hard work they do every day. We continue to issue guidance, write new rules, and levy enforcement actions at a time when we are being asked to focus on an important new endeavor.

Beneficial Ownership Information Implementation

Because at the moment, FinCEN's efforts, in significant part, are focused on the implementation of the beneficial ownership information reporting requirements of the Corporate Transparency Act. I'd like to spend a few minutes discussing our ongoing efforts and what is to come.

First, why is the collection of beneficial ownership information important? Illicit actors use opaque corporate structures to facilitate money laundering, corruption, sanctions and tax evasion, drug trafficking, fraud, and a host of other criminal offenses with impunity, while legitimate businesses and everyday Americans suffer from their misdeeds. This imposes real costs to the U.S. economy, and these bad actors take advantage of small businesses and American taxpayers.

Simply put, implementing the Corporate Transparency Act will help untangle these opaque corporate structures, thereby allowing enforcement authorities to go after criminals and protect our national security. And it's going to do so in a way that helps to level the playing field for American businesses—particularly small businesses—while keeping compliance burdens to an absolute minimum.

FinCEN recognizes that small businesses are critical to the American economy, and FinCEN is committed to making the process for reporting beneficial ownership information as simple and transparent as possible—particularly for small businesses who may have never heard of, or interacted with, FinCEN before.

Through outreach events and educational materials, we are working hard to create a framework where most small businesses should be able to file their beneficial ownership information on their own.

Recently, we published our *Small Entity Compliance Guide* (/sites/default/files/shared/BOI_Small_Compliance_Guide_FINAL_Sept_508C.pdf), which walks small businesses through the requirements in plain language. It is our hope that this guide serves as a primary resource for mom-and-pop shops, providing clarity on their reporting obligations and explanations on how to actually file their beneficial ownership information.

Our dedicated beneficial ownership information webpage (</boi-faqs>) also contains guidance documents, answers to frequently asked questions, introductory videos, quick reference guides, and other resources to ensure that reporting companies and the small business community have the tools they need to comply with the new requirements. We plan to continuously update these documents based on feedback from impacted communities, including small businesses and business service providers.

And in just the past two weeks, we published:

- The Small Entity Compliance Guide in eight additional languages (for a total of 11 languages).
- An additional set of Frequently Asked Questions (</boi-faqs>) were added to our growing library. And we are working now to translate those Frequently Asked Questions into several languages.
- An introductory brochure (/sites/default/files/shared/BOI_FinCEN_Brochure_508C.pdf), which can be printed, folded, and distributed to small businesses.
- And a Notice of Proposed Rulemaking (<https://www.federalregister.gov/documents/2023/09/28/2023-21226/beneficial-ownership-information-reporting-deadline-extension-for-reporting-companies-created-or>) that would extend the beneficial ownership information reporting deadline for certain reporting companies.

In addition, FinCEN's general Regulatory Helpline has been fielding questions since the Corporate Transparency Act was enacted, and soon, we'll be standing up a dedicated beneficial ownership information contact center. Based on the questions received through the Regulatory Helpline, we will issue additional FAQs on a rolling basis.

We are also planning webinars and additional outreach to a variety of State, local, and Tribal government stakeholders that regularly interact with the public, such as governors, mayors, and State financial institution supervisors.

I also want to stress that protecting the security and confidentiality of the beneficial ownership information we collect is a critical concern for us, especially in this era of increased cyber-related fraud and crime. Reporting companies can be confident that their sensitive information will be protected in a secure, confidential database built to meet the Federal government's highest security standards and that only authorized users can access the information for authorized purposes—to protect national security and to fight crime. We continue to fine tune this system ahead of January 1st.

To say there is a significant amount of work happening would be an understatement. But there is more work to be done.

Ensuring that all parties understand the new beneficial ownership rules is a top priority for Treasury. We are working together with the business community to ensure that this nationwide registry is a success.

FinCEN's Other Anti-Corruption Initiatives: Residential Real Estate and Investment Advisers

While FinCEN is devoting significant resources to implementing the Corporate Transparency Act, our mandate is broad, and we also remain hard at work on other priorities, including other initiatives that support the Administration's strategy to counter corruption.

The White House has identified combating corruption as one of its top priorities. In addition to our work implementing the Corporate Transparency Act and as part of our support to the White House's 2021 U.S. Strategy on Countering Corruption, FinCEN, along with our Treasury colleagues, has been examining the money laundering risks and vulnerabilities with certain "gatekeeper" industries such as real estate and investment advisers, and identifying how best to address those risks.

Let me focus first on real estate. For too long, the U.S. real estate market has been susceptible to manipulation and use as a haven for the laundered proceeds of illicit activity, including corruption.

Our real estate market is a relatively stable store of value, and it can be opaque, and there are gaps in industry regulation. Increasing transparency in the real estate sector will assist with curbing the ability of corrupt officials and criminals to launder the proceeds of their illicit activity or ill-gotten gains as well as strengthen U.S. national security and help protect the integrity of the U.S. financial system.

For that reason, Treasury is committed to developing a solution to increase the transparency in the domestic real estate market.

In December 2021, FinCEN issued an Advance Notice of Proposed Rulemaking to solicit public comment on a potential rule to address the vulnerability in the U.S. real estate market to money laundering and other illicit activity.

We considered how best to address the potential for money laundering created by real estate transactions in the commercial and residential sectors. These types of transactions—often conducted through opaque shell companies—are effective vehicles for laundering illicit funds.

We are currently developing a Notice of Proposed Rulemaking, the contours of which are still being determined. FinCEN aims to issue this NPRM later this year.

Additionally, addressing the AML/CFT risks presented by investment advisers is a priority for Treasury. As suggested in the White House's 2021 U.S. Strategy on Countering Corruption, we are working with our Treasury colleagues to re-examine the AML/CFT risks posed by investment advisers.

Investment advisers are currently subject to multiple Federal and state regulatory requirements. However, those requirements primarily focus on investor protection and market conduct.

As Treasury has noted on several occasions, investment advisers are not generally subject to comprehensive AML/CFT requirements under the Bank Secrecy Act (BSA). Although certain categories of investment advisers may undertake some AML/CFT obligations in limited circumstances, the absence of comprehensive regulation under the BSA in this industry creates gaps in the U.S. AML/CFT regime.

Along with our Treasury colleagues and other public and private stakeholders, we are assessing the AML/CFT risks this poses and identifying the best ways to mitigate those risks.

Fentanyl

Beyond these anti-corruption and transparency efforts, FinCEN also plays an important role in the whole-of-government effort to combat the trafficking of fentanyl and fentanyl precursor chemicals, a crisis that has had a terrible impact on many American families. Tracing and tracking the flow of funds related to fentanyl and its precursors is critical to disrupting the illicit supply chain and holding accountable those responsible for bringing fentanyl into the United States.

We know that to tackle a problem like this, financial institutions and law enforcement agencies need to work together—they each have a critical role to play—and FinCEN has a role to play in building the bridges for these two groups to collaborate.

That's why we have recently convened a number of public-private partnership information exchanges focused on fentanyl—domestically through FinCEN Exchange and internationally through a roundtable with Mexican authorities and financial institutions alongside their U.S. counterparts.

In August, our public-private roundtable in Mexico was the first U.S.-Mexico dialogue that convened private sector entities, public sector financial regulators, and law enforcement agencies from both sides of the border to discuss best practices and approaches to combat the misuse of the financial sector for drug trafficking, among other crimes. This was an important step, and we hope to maintain our momentum.

We are also working closely with our partners in Mexico and Canada through the North American Drug Dialogue, a commitment made by the heads of those three governments. Our three FIUs maintain a Trilateral Illicit Finance Working Group focused on:

1. developing and expanding money laundering indicators to include in public guidance and engagement with the private sector;
2. sharing money laundering typologies, tools, and best practices for analysis and information collection; and
3. enhancing law enforcement investigations through information sharing.

Whistleblower Program

I know our time today is limited, and Justine has several questions for me that I am sure will touch on some of what I have discussed today, so let me close just by highlighting one more exciting initiative that FinCEN is spearheading.

Among the many other regulatory initiatives we have underway, FinCEN also intends to issue a Notice of Proposed Rulemaking for FinCEN's newly established AML and sanctions whistleblower program.

I am especially excited to be at FinCEN to play a role in this. Sanctions enforcement in particular has long been a focus of my work.

Under the whistleblower program, FinCEN will be positioned to pay awards to eligible whistleblowers who voluntarily provide original information to FinCEN that leads to the successful enforcement of covered actions involving certain violations of the Bank Secrecy Act and U.S. economic sanctions.

While we work on the rulemaking necessary to fully implement this program, FinCEN is already receiving tips, investigating information received through those tips and making referrals to its enforcement colleagues at OFAC and the Department of Justice.

Conclusion

Thank you again to ACAMS for having me speak today.

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