



Statement of Roger Harris, President of Padgett

*Under the Microscope: Examining FinCEN's Implementation of the Corporate  
Transparency Act*

United States House of Representatives  
Committee on Small Business

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2360 Rayburn House Office Building



Chairman Williams, Ranking Member Velázquez, and members of the House Committee on Small Business, thank you for the opportunity to testify today regarding the Financial Crimes Enforcement Network's (FinCEN's) implementation of The Corporate Transparency Act (CTA) and new Beneficial Ownership Information (BOI) reporting requirement on small businesses.

My name is Roger Harris, and I am the President of Padgett based in Athens, Georgia.

Padgett is a national accounting, advisory, and tax preparation company with approximately 200 offices across the U.S. that has served tens of thousands of small business clients for almost 60 years. Prior to becoming President of Padgett in 1992, I ran one of the largest Padgett franchises with the company for 10 years. I have long been passionate about the intersection of small business and government policy. Over the years, I have had the opportunity to work with this committee and others in Congress and always welcome the opportunity to provide feedback on the real-world impact of specific policies on business owners and their operations.

At Padgett, our daily work is primarily with what would be considered “mom and pop” small businesses. Our clients on average have less than 20 employees and come from a wide range of industries. As a result, the target audience impacted by the new BOI reporting requirement hits squarely at the businesses that we interact with every day.

I want to thank the committee for holding this hearing and putting a brighter spotlight on some of the challenges the BOI reporting requirement is presenting to both small businesses and tax professionals. While I have no problem with the goals of the CTA, and certainly am not an expert on how to best curb money laundering from a law enforcement perspective, I do believe that the current implementation of the BOI reporting requirement, without adjustments, will likely lead to mass non-compliance.

Over the past year, I have met with a variety of congressional offices and committees to share my concerns and feedback. I have also worked with the National Association of Enrolled Agents (NAEA) and the American Institute of CPAs (AICPA) to both raise awareness among tax professionals and highlight areas of concern for policymakers. Finally, I have participated in several meetings directly with FinCEN, where I have attempted to raise questions and seek guidance on the practical implications of the policies.



## **CTA and BOI Reporting Requirements**

As the committee is well-aware, in 2021, Congress passed the bipartisan CTA with the goal of curbing financial fraud and money laundering. The law requires many companies doing business in the United States to report information about who ultimately owns or controls them. The CTA requires “reporting companies”, defined as corporations, limited liability companies, or other similar entities registered to do business in the U.S., to file a BOI report with FinCEN, a requirement that began January 1, 2024. Reporting companies created or registered to do business in the United States before January 1, 2024, must file by January 1, 2025. Reporting companies created or registered to do business in the United States in 2024 have 90 calendar days to file after receiving actual or public notice that their company’s creation or registration is effective.

There are 23 types of entities that are exempt from the reporting requirements, such as tax-exempt entities, credit unions, and public utilities. The most relevant exemption is for “large operating companies.” An entity falls into this category, and therefore is not a reporting company, if it: (1) “employs more than 20 employees on a full-time basis in the United States”; (2) “filed in the previous year federal income tax returns in the United States demonstrating more than \$5,000,000 in gross receipts or sales in the aggregate,” including the receipts or sales of other entities owned by the entity and through which the entity operates; and (3) “has an operating presence at a physical office within the United States.” A company must meet all three of the above criteria in order to be a “large operating company.” FinCEN has estimated that there will be approximately 32 million reporting companies in Year 1 of the reporting requirement and approximately 5 million new reporting companies each year thereafter.

## **Small Business Impacted and Trusted Advisors**

According to the SBA’s Office of Advocacy, there are currently 33.3 million small businesses in the U.S. Close to 5.5 million of those businesses have between 1 and 19 employees, while over 27 million do not have any employees. Individually they are small, but collectively they represent a major portion of our economy and jobs. There are 61.6 million small business employees in the U.S., comprising nearly 46% of U.S. employees.

These are the businesses and entities that will primarily be impacted by the BOI reporting requirement. For the majority of these small businesses, they do not have the internal capacity to track and follow the many regulations and compliance requirements that fall on their businesses.



Small business owners get into business to do the one thing they love and the 99 things they hate. Dealing with the complexity of federal regulations often ranks high on that list of 99.

In order to get up-to-date information and ensure they are meeting their requirements, many small businesses rely on outside trusted advisors, such as tax professionals, for assistance. On a regular basis, we help all of our clients navigate the complexities of the tax code and a range of other decisions impacting their operations, such as choosing a business structure when organizing or advising on benefit offerings.

When new federal laws are implemented, small businesses often turn to these advisors for help and information. We saw this throughout the Covid-19 pandemic with the myriad of pieces of legislation that were passed as well as after the Affordable Care Act (ACA) became law.

### **BOI Reporting Requirement Information Gaps and Challenges**

With an estimated 32 million entities subject to the new BOI reporting requirements, and limited resources going into educating businesses about the new policy, the vast majority of businesses are currently unaware that the requirement even exists. While FinCEN has taken some steps to try to reach the small business community, small businesses are not a normal constituency for FinCEN nor a population they have regular interaction with.

As a result, to reach any significant penetration in the small business community that will allow for high levels of compliance, FinCEN needs the buy-in and help of professionals that work with small businesses on a regular basis. However, many of us are being advised by our attorneys and insurance companies not to assist our clients with the BOI reporting requirement because of the potential risks and penalties involved.

For starters, the penalties for non-compliance with the filing requirements are large. Civil penalties are up to \$500 per day that a violation continues. Criminal penalties include a \$10,000 fine and/or up to two years of imprisonment. The penalties can apply not just to the underlying business but also to third-parties assisting in the filing. FinCEN has emphasized that the penalty only applies to those who willfully violate the reporting requirement. However, they have been unwilling to provide specific examples of what constitutes a willful violation, leaving a grey area that makes it difficult for third-party providers to interpret or advise on.



FinCEN also chose not to include a due diligence standard for third-party service providers that would have at least provided a road map of what questions needed to be asked before providing assistance or signing off on a report. With Chevron deference, the decision of what constitutes a “willful” violation rests solely with FinCEN, with little recourse for a small business or tax practitioner to turn to if they disagree with the agency.

There has also been debate about whether non-attorney practitioners advising clients on the requirements of the CTA or the BOI reporting form could be considered unauthorized practice of law. This is particularly a concern when determining who in a company has substantial control. As a result of these concerns, many tax practitioners are being advised by our attorneys and insurance companies not to assist our clients with the BOI reporting requirement due to the potential risks and penalties involved.

### **Recommendations for Moving Forward on Beneficial Ownership**

As it currently stands, I believe the new BOI reporting requirement is on track for massive non-compliance in the years ahead unless several changes are made. While millions of businesses will likely comply with the law, there will be many more millions that do not, making it ineffective and creating a high-level of uncertainty around who will be penalized and when.

I would make the following recommendations to Congress as you consider the path forward:

- A suspension of all enforcement actions until one year after the conclusion of all court cases related to the *NSBA v. Yellen* case, which recently found the CTA to be unconstitutional. The case has compounded confusion among many small businesses while many others simply remain unaware that the reporting requirement exists. A delay in enforcement action will allow more small businesses to learn about and adjust to the reporting requirement without the fear of civil and criminal penalties. During this period, the portal can remain open for small businesses to voluntarily report. I know AICPA has made a similar request and NAEA is also supportive.
- The requirement to update certain information (i.e., address, name change, new driver’s license) on beneficial owners should be made annual, while perhaps keeping the 30-day requirement when there is an actual change in the beneficial owners of the business. The



current requirement that an updated report must be filed no later than 30 days after any change to the required information about your company or its beneficial owners is burdensome for many small businesses and beneficial owners and does not reflect the reality of their relationship with third-party service providers. Tax professionals and other third-party providers will likely be having annual or slightly more often communications with their clients, but will not be interacting with them on a weekly or monthly basis. If a beneficial owner's driver's license is renewed, has a name change, or a change in residential address, notifying FinCEN within 30 days will not be top of mind and would likely lead to rampant non-compliance. Furthermore, third-party service providers are not privy to those changes or made aware of them on a regular basis.

- An additional sentence should be added to the BOI certification stating that third-party service providers (who are not officers, owners, or employees of the business) may rely on the information given to them by the reporting business as true, correct, and complete, and that additional investigation by the third-party service provider is not required. Currently, the person submitting BOI information to FinCEN must certify that it is “true, correct, and complete.” For third-party service providers such as tax professionals, this standard is beyond their normal course of knowledge and will discourage third-party service providers from assisting small businesses in complying with the law. The certification is a much higher standard than paid tax preparers are currently subject to on individual tax returns: “Under penalties of perjury, I declare that I have examined this return and accompanying schedules and statements, and to the best of my knowledge and belief, they are true, correct, and complete. Declaration of preparer (other than taxpayer) is based on all information of which preparer has any knowledge.” While I understand that FinCEN argued in its final rule that the reporting company is ultimately responsible for the filing and third parties will be certifying on their behalf, the reality is that the third-party may also be subject to the penalties and additional protection is needed to encourage third-parties to help.
- FinCEN should work more closely with the IRS to better understand how to educate the tax professional industry as well as to provide joint guidance and examples (as are common with more complicated tax rules) that help empower the industry to be part of the solution. In addition to the issues raised throughout this testimony, examples of where more clarity is needed includes substantial control of family members, business closers, and changes in number of employees that cause a business to move in and out of the BOI requirements.



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In closing, I think this hearing today is a step in the right direction. I applaud the committees for hosting it and was honored to participate along with these accomplished small business owners.