



**Comment Regarding Notice of Proposed Rulemaking
Docket No. FINCEN-2021-0005 / 2021-26548**

Policy Division
Financial Crimes Enforcement Network
P.O. Box 39
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February 4th, 2022
Submitted online & by post

Democrats Abroad is pleased to respond to the invitation of the Financial Crimes Enforcement Network ("FinCEN") to comment on the Notice of Proposed Rulemaking ("NPRM") relating to the Beneficial Ownership Information Reporting Requirements.

While we welcome the *intention* behind the Financial Beneficial Ownership Information (FBOI) reporting, however, we have serious concerns stemming from our experiences as non-resident Americans who own small businesses overseas. This concern specifically relates to Foreign "Reporting Companies" who have officially registered to do business in the United States by filing a document with the Secretary of State (or similar) office.

Our concerns fall into five categories as detailed below. In summary, they relate to redundant reporting; excessive and disproportionate penalties; failure to clearly define who is responsible/liable for penalties; absence of a distinction between wilful and non-wilful violations; and FinCEN's plan (or lack thereof) for announcing the final rule.

Redundancy

The NPRM appears to impose another redundant layer of reporting for non-resident American citizens who own small businesses and also have a business license in the USA. The IRS already collects information on any foreign entity owned by non-resident American citizens in the compulsory IRS Forms 5471, 8865, 1120F, 8858, 1040NR, 3520A, and 3520. These forms all include the information which the new rules will require. In particular, IRS Form 5471 requires any American citizen with a 10% ownership of a foreign company to submit the same information, with substantial penalties for failure to do so.

We also note that many countries have similar FBOI reporting requirements that are equal to or more stringent than those proposed by FinCEN. We advocate for FinCEN to exempt entities registered in jurisdictions with FBOI reporting that is deemed to be adequate and where registers are public, semi-public, or otherwise accessible by the United States government.

Penalties: Non-Willful Violations, Disproportionality, & Ambiguous Liability

Democrats Abroad advocates for inclusion of a non-willful definition and proportionate penalties. The proposed rule fails to consider non-willful violations. In the absence of such a definition, the proposed penalty maximum of \$10,000 with potentially two years imprisonment (after only 20 days in violation) is excessive for a non-willful violation that occurred in the absence of serious financial crime. An uninformed business owner could spend thousands of dollars to prepare and file IRS information reports according to the tax calendar, only to be fined substantially or even imprisoned for being unaware of FinCEN's existence and not reporting within a short timespan. In addition, the proposed rules fail to make clear who is liable for payment of penalties, the "Reporting Company" or the Beneficial Owner, which could lead to major problems.

Announcement Plan & Reach

Democrats Abroad advocates for a comprehensive announcement plan to ensure that the final rules reach Foreign "Reporting Companies" with limited engagement or activity in the USA. In the past, other FinCEN requirements have suffered from limited awareness. American citizens living abroad have often suffered disproportionate penalties for non-wilful violations in which no financial crimes had occurred beyond reporting errors or failure to file.

If FinCEN proceeds with this proposal – in order to ensure a growing awareness of reporting requirements over time – it should use every communication channel available including notices to foreign addresses on file at the IRS, STEP Notifications with the State Department, and information pamphlets distributed with passports issued abroad. This would ensure a growing awareness of reporting obligations over time.

Even then, a long period should be provided between announcement and the start of compliance obligations for Americans living abroad.

Thank you very much for your attention to our concerns. As several legislative measures and federal regulations stemming from over the years have unfairly affected millions of U.S. citizen taxpayers, Democrats Abroad believes that any new FinCEN rule should exercise extreme caution in considering both the goals and potential negative impacts of ordinary, working-class Americans living abroad.

We thank you for the opportunity to provide commentary and recommendations.

Please contact Rebecca Lammers of our Taxation Task Force on taxadvocacy@democratsabroad.org with any questions about the information and recommendations provided.

Sincerely,

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