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Chicago, Illinois

Please Address Reply to:

May 27, 2025

Submitted Electronically via *Federal E-Rulemaking Portal*: <https://www.regulations.gov>

Docket Number FINCEN-2025-0001
The Office of Management and Budget (OMB)
Control Number 1506-0076
Regulatory Identification Number (RIN) 1506-AB49

Executive Director
DEBORAH O. MCKINNON

**Re: Comments of *The American College of Trust and Estate Counsel ("ACTEC")*
on The FinCEN Interim Final Rule Concerning Beneficial Ownership
Information Reporting Requirements Under The Corporate
Transparency Act**

On March 26, 2025, the Financial Crimes Enforcement Network of the U.S. Department of Treasury (FinCEN) published an interim final rule (the "IFR") at 90 Fed. Reg. at 13,688 to narrow the existing beneficial ownership information (BOI) reporting requirements under the Corporate Transparency Act (CTA) to require only entities previously defined as "foreign reporting companies" to report BOI. The IFR, among other things, also exempts foreign reporting companies from having to report the BOI of any U.S. persons who are beneficial owners of the foreign reporting company and exempts U.S. persons from having to provide such information to any foreign reporting company for which they are a beneficial owner. FinCEN has requested that any comments to the IFR be submitted by May 27, 2025 and has stated its intention to issue a final rule in 2025.¹

In this comment letter, ACTEC focuses on certain aspects of the IFR that pertain to the continuing need of US persons **(i)** to maintain and update their FinCEN identification numbers, and **(ii)** to have foreign reporting companies report their status as "company applicants." We commend Treasury and FinCEN for their efforts in connection with the IFR, and we appreciate the opportunity to comment on the IFR.

ACTEC is a nonprofit association of lawyers and law professors. Its more than 2,400 members are called "Fellows" and practice throughout the United States, Canada, and other foreign countries, with extensive experience in the preparation of wills and trusts, estate planning, and administration of trusts and estates of decedents, minors, and incompetents. Fellows of ACTEC are elected to membership

¹ The Interim Final Rule can be found at the following link:

<https://www.federalregister.gov/documents/2025/03/26/2025-05199/beneficial-ownership-information-reporting-requirement-revision-and-deadline-extension>

by their peers on the basis of professional reputation and ability in the fields of trusts and estates and on the basis of having made substantial contributions to those fields through lecturing, writing, teaching, and bar association activities. Fellows of ACTEC also have extensive experience in matters pertaining to business entities. These comments were prepared by members of ACTEC's Washington Affairs Committee, Business Planning Committee and the FATF Task Force. ACTEC offers technical comments about the law and its effective administration but does not take positions on matters of policy or political objectives.

ACTEC's comments regarding the IFR are set forth in the attached memorandum. If you or your staff would like to discuss the contents of this memorandum with the ACTEC Fellows who created it, please contact Kevin Matz, Chair of ACTEC's Washington Affairs Committee (212-745-9546, Kevin.matz@afslaw.com), or Deborah McKinnon, ACTEC Executive Director (202-684-8460, domckinnon@actec.org).

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "Peter S. Gordon". The signature is fluid and cursive, with the first name "Peter" being more prominent than the last name "Gordon".

Peter S. Gordon
President, The American College of Trust and Estate Counsel (ACTEC)

**Comments of the American College of Trust and Estate Counsel (“ACTEC”) on
The FinCEN Interim Final Rule Concerning Beneficial Ownership Information Reporting
Requirements under the Corporate Transparency Act**

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In this comment letter, we focus on certain aspects of the IFR that pertain to the continuing need of US persons (i) to maintain and update their FinCEN identification numbers, and (ii) to have foreign reporting companies report their status as “company applicants.” We commend Treasury and FinCEN for their efforts in connection with the IFR, and we appreciate the opportunity to comment on the IFR.

Background and Analysis

Background Information on FinCEN Identifiers

The preamble to the IFR describes those who obtain a FinCEN identifier as “[i]ndividuals associated with foreign reporting companies that elect to request an identifier independent of the FinCEN identifier requested by the associated company as part of its BOIR submission.”² This may be an accurate description of those who obtain a FinCEN identifier after March 26, 2025, but it does not accurately describe the vast majority of those who received a FinCEN identifier before that date.

¹ The Interim Final Rule can be found at the following link:
<https://www.federalregister.gov/documents/2025/03/26/2025-05199/beneficial-ownership-information-reporting-requirement-revision-and-deadline-extension>

² 90 Fed. Reg. at 13,696 (March 26, 2025).

Until the IFR was issued, a corporation, limited liability company, or other similar entity “created by the filing of a document with a secretary of state or a similar office under the law of a State or Indian Tribe...” was defined as a Reporting Company.³ These were commonly referred to as domestic reporting companies, and individuals obtained FinCEN identifiers because they were beneficial owners or company applicants of those domestic reporting companies.

According to a declaration filed in court in litigation concerning the constitutionality of the CTA, over 10 million BOI reports had been filed as of December 11, 2024.⁴ There are potentially tens of thousands, and perhaps hundreds of thousands, of FinCEN identifiers that have already been issued to individuals who are not associated with any reporting company, as defined in the IFR. We will refer to individuals who obtained a FinCEN identifier prior to March 26, 2025 and who are neither a beneficial owner nor a company applicant of a reporting company as defined in the IFR as “Domestic FinCEN ID Holders.”

Domestic FinCEN ID Holders would have obtained their FinCEN identifiers because they were beneficial owners or company applicants of what were previously referred to as domestic reporting companies.⁵ Those individuals would have had no reason to obtain a FinCEN identifier had the IFR definition of reporting company applied when the final CTA regulations were published on September 30, 2022.

U.S. Citizen Company Applicants After the IFR

The IFR creates a new exemption under 31 C.F.R. §1010.380(d)(4). That new exemption eliminates the obligation of reporting companies to disclose the BOI of United States persons who are beneficial owners. It also exempts United States persons who are beneficial owners from the obligation to provide BOI to a reporting company. This new exemption was created because “[t]he Secretary has assessed that exempting U.S. persons’ BOI would ensure that the Reporting Rule is appropriately tailored to advance the public interest, considering the burdens imposed by the regulations without sufficient benefits.”⁶

To date it appears the Secretary has not made a similar assessment with regard to United States persons who are company applicants. We believe this may be an oversight. It is difficult to

³ 31 U.S.C. § 5336(a)(11)(A)(i).

⁴ See Paragraph 8, Declaration of Andrea Gacki dated December 11, 2024 and submitted to the Eastern District of Texas Sherman Division as Exhibit A to Document 35, Defendants’ Motion to Stay Preliminary Injunction Pending Appeal, of *Texas Top Cop Shop v. Garland*, No. 4:2024cv00478 (E.D. Tex. 2024), on December 11, 2024.

⁵ See 31 C.F.R. §1010.380(c)(1)(i) prior to the modifications of the IFR.

⁶ 90 Fed. Reg. at 13,691 (March 26, 2025).

understand how it advances the public interest, considering the burdens imposed, for FinCEN to have records of United States persons associated with registering foreign entities to do business in the United States when the Secretary has determined that it does not advance the public interest, considering the burdens imposed, for FinCEN to have records of United States persons who (i) own 25% of or (2) exercise substantial control over those same foreign entities.

Updating or Correcting Information and FinCEN Identifiers

Individuals who have a FinCEN identifier, including Domestic FinCEN ID Holders, are required to update any information previously submitted to FinCEN in an application for such FinCEN identifier within 30 calendar days after the change occurs or correct inaccuracies within 30 calendar days after the date on which the individual becomes aware or has reason to know of the inaccuracy (the “30 Day Update Requirement”).⁷ Failure to timely update or correct that information can result in both civil and criminal penalties.⁸

Without limiting the scope of the above comments, many lawyers, including ACTEC Fellows, have obtained FinCEN identifiers for forming domestic reporting entities. If and to the extent that lawyers have not registered foreign reporting companies, we respectfully suggest that they should not be required to update their FinCEN identifier information for the rest of their lives.

Summary of Recommended Changes to the IFR

Our comments relate to (1) whether the information an individual provided to FinCEN to obtain a FinCEN identifier needs to be updated and (2) whether BOI about company applicants who are United States persons should be exempted from disclosure. As detailed below we recommend that (1) a system be established so that individuals that have been issued FinCEN identifiers can notify FinCEN that they will no longer be updating the associated information, as a result of which the FinCEN identifier should become inactive, (2) the IFR should be revised to confirm that a United States person with a FinCEN identifier is not subject to the 30 Day Update Requirement, (3) the IFR should be revised to confirm that Domestic FinCEN ID Holders are not subject to the 30 Day Update Requirement, and (4) the IFR should be revised to clarify that a company applicant who is a United States person does not need to be identified by a reporting company in its filings with FinCEN.

Authority to Grant Relief

FinCEN was granted broad authority to issue regulations regarding FinCEN identifiers. 31 U.S.C. § 5336(b)(4)(A) states the Secretary of the Treasury shall “by regulation prescribe procedures and

⁷ 31 C.F.R. §1010.380(b)(4)(iii)(A).

⁸ 31 U.S.C. § 5336(h)(1)(B) and 31 C.F.R. §1010.380(g).

standards governing any report under paragraph (2) and any FinCEN identifier under paragraph (3)...” This statutory provision grants FinCEN significantly broad rulemaking authority.

The statute continues under 31 U.S.C. § 5336(b)(4)(B) to encourage the Secretary to issue regulations that minimize burdens on reporting companies associated with collecting information while ensuring the information collected is “accurate, complete, and highly useful.” While 31 U.S.C. § 5336(b)(4)(B) provides guidance in terms of the burden placed on reporting companies, it is reasonable to expect that Congress also wanted Treasury to exercise its broad discretion in issuing regulations regarding FinCEN identifiers that minimizes the burden on individuals as well.

With regard to Domestic FinCEN ID Holders in particular, updated information is not “useful” because those individuals are no longer associated with any reporting company as defined in the IFR. In other words, as defined above Domestic FinCEN ID Holders are not company applicants or beneficial owners with regard to any reporting company, and requiring such individuals to continue updating their BOI with FinCEN is highly burdensome, while providing no useful information. FinCEN has the statutory authority to eliminate this burden when the IFR is finalized and it should do so.⁹

With regard to granting relief to company applicants who are U.S. persons, the Secretary has this authority under 31 U.S.C. § 5318(a)(7).

Recommendations

We have the following recommendations in connection with FinCEN’s finalization of the IFR:

1. First, as represented in FAQ M.6., originally issued September 29, 2023, FinCEN should allow individuals who have been issued FinCEN identifiers to elect to inform FinCEN that they will no longer be updating FinCEN of any changes or corrections to information previously reported, should they desire to make this election. FinCEN would cancel the associated FinCEN identifiers and they could no longer be used by a reporting company to disclose the BOI of those individuals or to disclose a company applicant.

⁹ One such example of where this may be an issue is where a corporate fiduciary is trustee of a trust that would have been considered to be a beneficial owner due to the trustee (i) owning 25% of or (2) exercising substantial control over a reporting company, as defined prior to the IFR. Prior to the issuance of the IFR, it was not uncommon for employees of corporate fiduciaries to obtain FinCEN identifiers in an abundance of caution. As noted above, the 30 Day Update Requirement would require holders of FinCEN identifiers to update their information provided to FinCEN. This information includes the address of the holder of the FinCEN identifier. Now that the purpose for obtaining the FinCEN identifier is no longer relevant, the person who applied for and received the FinCEN identifier potentially will no longer be considering the need to update their address should that change. Removing the 30 Day Update Requirement eliminates the burden on individuals employed by corporate fiduciaries, who obtained a FinCEN identifier, to provide such information.

FinCEN could notify any reporting company that relied on that FinCEN identifier, as defined in the IFR, that the FinCEN identifier has been canceled and the reporting company is now obligated to file an updated BOI report of any change or correction to the BOI of the associated beneficial owner. Given the substantially reduced number of reporting companies expected to file with FinCEN under the IFR, this may prove to be a workable system.

This would be the preferred approach since it would provide a simple and comprehensive solution to both Domestic FinCEN ID Holders and other individuals who obtain a FinCEN identifier.

2. Second, we recommend modifying 31 C.F.R. §1010.380(b)(4)(iii)(A) to read, “Any individual who is not a United States person that has obtained a FinCEN identifier shall update or correct any information previously submitted to FinCEN in an application for such FinCEN identifier.” Given that under the IFR reporting companies are not obligated to collect BOI with regard to United States persons who are beneficial owners there should be no obligation for United States persons to update information provided to obtain a FinCEN identifier. The only potential exception to this (subject to our fourth recommendation set forth below) would be a United States person who is using their FinCEN identifier to report as a company applicant with regard to a reporting company.

3. Third, we further recommend adding new section 31 C.F.R. §1010.380(b)(4)(iii)(A)(3), which would read as follows:

“An individual who has obtained a FinCEN identifier is not required to update or correct any information previously submitted to FinCEN in an application for such FinCEN identifier if no reporting company has included such FinCEN identifier in its report in lieu of the information required under paragraph (b)(1) of this section with respect to such individual.”

This language would eliminate the obligation to update or correct BOI for Domestic FinCEN ID Holders, and is a proper exercise of the discretion granted by Congress to Treasury and FinCEN in light of the reduced scope of the CTA under the IFR.

4. Fourth, we recommend that the IFR be modified to provide that a reporting company, as defined in the IFR, shall not be required to disclose a company applicant who is a United States person and a company applicant who is a United States person shall not be required to provide their information to a reporting company. As noted above, if the Secretary has determined the burden of collecting BOI of United States persons who own at least 25% of or exercise substantial control over reporting companies outweighs the benefits, a similar conclusion should follow with regard to company applicants who are largely performing mechanical tasks associated with registering a foreign entity to do business in a particular state.

Conclusion

In light of the changed definition of reporting company under the IFR there may be hundreds of thousands of United States persons who have a FinCEN identifier, but who are no longer a beneficial owner or a company applicant of any reporting company. We urge FinCEN to provide clear guidance that these individuals will no longer be subject to the 30 Day Update Requirement. In addition, the obligation to report on United States persons who are company applicants should likewise be eliminated consistent with the fact that BOI is no longer being collected for United States persons who are beneficial owners of reporting companies.