

FinCEN Issues Final Rule on Use of Entity FinCEN Identifiers to Fulfill BOI Reporting Requirements Under the CTA

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The material set forth below was developed before the 2024 and 2025 district court injunctions regarding the CTA (which were subsequently stayed and continue to be litigated). As a result, the material set forth below, including filing deadlines, may not be current. Please consult FinCEN's [website](#) for the latest filing due dates and other information regarding the CTA and its requirements.

Brief Overview:

On November 8, the Financial Crimes Enforcement Network (FinCEN) published a final rule specifying the circumstances under which a reporting company may report another entity's FinCEN identifier in lieu of an individual's beneficial ownership information (BOI). A FinCEN identifier is a unique number that FinCEN will issue upon request to an individual who provides FinCEN with the information that is required from a beneficial owner or company applicant, and to a reporting company that has provided its BOI to FinCEN. Neither entities nor individuals are required to obtain FinCEN identifiers, however, doing so may simplify the reporting process, particularly with respect to persons involved in forming or controlling multiple entities or with respect to complex organizational structures, as well as updating reports after initial filing. The rule purports to address the concern of some commenters that the reporting of entity FinCEN identifiers could obscure the identities of beneficial owners — a result that would cut against the intended purpose of the Corporate Transparency Act (CTA).

Rulemaking History:

In the [notice of proposed rulemaking](#) for the Beneficial Ownership Information Reporting Requirements published in December 2021, FinCEN proposed processes for obtaining, updating, and using FinCEN identifiers. In the subsequent [final rule](#), FinCEN established the rules for obtaining and updating individual and entity FinCEN identifiers, and for using an individual's FinCEN identifier. However, FinCEN declined to finalize rules for using an entity FinCEN identifier in order to further consider issues raised by commenters, specifically that the use of entity FinCEN identifiers could create greater secrecy or lead to incomplete or misleading disclosures. FinCEN re-proposed this part of the rule in the [notice of proposed rulemaking](#) on Beneficial Ownership Information Access and Safeguards, and Use of FinCEN Identifiers for Entities, which it published on December 16, 2022 (the Access NPRM).

The Amendment:

In the Access NPRM, FinCEN proposed allowing a reporting company to report another entity's FinCEN identifier and full legal name in lieu of other required BOI if three conditions were met: (1) the entity has obtained a FinCEN identifier and provided that FinCEN identifier to the reporting company; (2) an individual is or may be a beneficial owner of the reporting company by virtue of an interest in the reporting company that the individual holds through the entity; and (3) the beneficial owners of the entity and of the reporting company are the same individuals.

FinCEN indicated that the first two conditions are straightforward clarifications, while the third requires an implicit assumption in the statutory language. In the case of a single individual who is the sole beneficial owner of a reporting company through a single intermediate entity of which the individual is also the sole beneficial owner, the individual would clearly be the beneficial owner of both the reporting company and the intermediate entity. Thus, reporting the intermediate entity's FinCEN identifier in lieu of the individual's BOI would accurately indicate that the individual is a beneficial owner of both entities. The scheme would become murkier if an intermediate company's FinCEN identifier were used for a reporting company with multiple beneficial owners and/or intermediate entities. For example, a reporting company's use of an intermediate entity's FinCEN identifier could identify individuals who are only beneficial owners of the intermediate entity and not the reporting company, or could fail to identify all beneficial owners of the reporting company where some beneficial owners of the reporting company are not beneficial owners of the intermediate entity.

FinCEN's formulation of the rule in the Access NPRM was based on the general notion that the FinCEN identifier provision was not intended to enable reporting companies to misidentify beneficial owners (citing concerns with both over-inclusive and under-inclusive reporting). While the formulation may be aligned with the purpose of the CTA, it should be noted that the rule may be of limited use in practice. It remains to be seen how common it will be for a reporting company and an intermediate entity to have the same beneficial owners, particularly in light of the broad definition of beneficial owner in the regulations. In the final rule, FinCEN noted that the proposed approach would reduce the risk of using another entity's FinCEN identifier to obscure beneficial owners. FinCEN also received comments to the Access NPRM proposing specific changes to the regulatory text, among others.

The Final Rule:

In response to these comments, FinCEN's final rule includes the following changes: (1) to consistently refer to the entity whose FinCEN identifier the reporting company may use as "another entity" or "the other entity" rather than "the entity," to avoid confusion between the reporting company itself and the intermediate entity; and (2) to make clear that it is an individual's *ownership* interest, rather than other indicia of control, in another entity that allows the reporting company to report the other entity's FinCEN identifier in lieu of the individual's information. FinCEN expects that the changes will improve the clarity of the provision and increase the likelihood that reporting companies will use the FinCEN identifier as intended.

Following these changes, 31 CFR 1010.380(b)(4)(ii)(B) will read as follows:

(B) A reporting company may report another entity's FinCEN identifier and full legal name in lieu of the information required under paragraph (b)(1)(ii) of this section with respect to the beneficial owners of the reporting company only if:

(1) The other entity has obtained a FinCEN identifier and provided that FinCEN identifier to the reporting company;

(2) An individual is or may be a beneficial owner of the reporting company by virtue of an interest in the reporting company that the individual holds through an ownership interest in the other entity; and

(3) The beneficial owners of the other entity and of the reporting company are the same individuals.

Despite concerns, FinCEN retained language that an individual “may be” a qualifying beneficial owner of the reporting company, stating that the clause allows a reporting company to report another entity’s FinCEN identifier when it has a good faith belief that the use is appropriate, a practice the CTA expressly permits. FinCEN also did not modify the language requiring a reporting company to file an update with FinCEN and to cease reporting the other entity’s FinCEN identifier if the reportable beneficial owners of either the reporting company or the entity whose FinCEN identifier was reported are no longer the same individuals.

Takeaways:

Reporting an entity FinCEN identifier may provide a more convenient way to satisfy the reporting requirements under the CTA in applicable circumstances, but clients must monitor any changes in beneficial owners between reporting companies utilizing this rule. It remains to be seen how useful this rule will be in practice, particularly in light of the broad definition of beneficial ownership, which may mean that having identical beneficial owners, *solely by virtue of an ownership interest*, with respect to multiple entities, is a rare occurrence.

If you have questions or concerns regarding how this development may impact your reporting practices or obligations, please reach out to the authors or your primary Troutman Pepper contact.

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