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Policy Division
Financial Crimes Enforcement Network
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Submitted Electronically: <http://www.regulations.gov>

Date March 17, 2023

Subject Docket Number FINCEN-2023-0001; OMB Control Number 1506-0076 Individual FinCEN Identifiers; Comments in Response to Notice and Request for Comments

Dear FinCEN Policy Division:

CT Corporation (CT) is America's leading corporate service company. CT was founded in 1892 to help businesses comply with the legal requirements to incorporate businesses and remain in compliance by providing products and services to keep them in good standing. More than one hundred thirty years later, we remain committed to taking care of our customers' needs by providing and delivering professional and knowledgeable, high-quality service in all 50 U.S. states, the District of Columbia, and in many international jurisdictions. Our customer base spans from the smallest startup businesses to the largest global conglomerates.

CT supports Congressional and FinCEN objectives in enacting the Corporate Transparency Act. CT appreciates the opportunity to provide comments to FinCEN's proposed rules, reports, and applications and would welcome additional and continuing conversations with FinCEN.

The following responses are respectfully submitted regarding selected questions and topics posed by FinCEN's Notice and Request for Comments posted on January 17, 2023, covering the application used to collect information from individuals who seek to obtain a FinCEN Identifier. Our overarching request is that the data fields provide clarity to avoid uncertainty and errors in completing the application form.

Sincerely,

David Spencer
Director of Compliance and Government Operations, Business Enablement, CT Corporation
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Part I. Individual Information:

Line 8. Address type: An instruction should be added that a business address should be selected for Company Applicants who form or register entities in the course of business.

An instruction should be added to line 8 “Address type” indicating that a business address must be set forth in the case of a Company Applicant who forms or registers entities in the course of such Company Applicant's business. In the event that a requestor is both a Company Applicant who forms or registers entities in the course of such Company Applicant's business and a Beneficial Owner of a Reporting Company, the requestor must provide both their business address and their residential address. In all other situations the requestor must provide a residential address. Without adequate instruction it is not clear whether the requestor is to provide a business or residential address. We also suggest that the parenthetical appearing between lines 7 and 8 be removed in favor of a more detailed instruction as recommended above.

Line 14. Identifying document type: Foreign passport should only be used where state issued driver's license, state/local/Tribe-issued ID, or U.S. passport are not available.

An instruction should be added indicating that a foreign passport can only be used where options a, b and c (state issued driver's license, state/local/Tribe-issued ID, U.S. passport) are not available. This will reduce errors to comply with the FinCEN final rule [31 C.F.R. §1010.380(b)(1)(ii)(D)(4)].

Line 17. Identifying document image: Redaction of non-relevant information.

We suggest that individuals be permitted to block out all information on their identifying document other than the information that is required to be reported. The image of the document is for the purpose of corroborating required information. As such, FinCEN does not need to have information in its database that is not considered necessary by the Corporate Transparency Act or final reporting rule.

General Comments:

Updating of Company Applicant Information: Company Applicants requesting FinCEN Identifiers should not be required to provide continual updates of their information to FinCEN.

A Company Applicant who provides their personal information to a Reporting Company for insertion on a BOI report is not required to update that information going forward. Providing information directly to Reporting Companies may, however, place the Company Applicant at risk of identity theft. The alternative of a Company Applicant obtaining a FinCEN Identifier will require the Company Applicant to update certain information with FinCEN within 30 days after that information changes. This places an unreasonable burden upon the Company Applicant to forever provide certain updated information to FinCEN. We suggest that the requirement of providing updated information to FinCEN be removed for Company Applicants; current information is not really necessary to fulfill the objectives of the Corporate Transparency Act due to the limited relevance of this information. As another option, updates to the FinCEN Identifier would still be required, but instead of updating within 30 days of a change, that individual would be required to file the update at any time after the personally identifiable information (PII) change became effective and before acting as a Company Applicant for the first time under the new PII. Under this option, FinCEN would still be receiving current, accurate PII about Company Applicants upon formations and registrations - without individuals who never again in their lives acted as a Company Applicant having had to continue to file updates upon changes.

Either of these options will also make the obtaining of a FinCEN Identifier a more viable option for individuals who will otherwise be reluctant to apply for one because of the lifetime updating obligation.

FinCEN Identifier Cancellation Option.

We suggest that an option be made available for someone who has obtained a FinCEN Identifier to cancel the Identifier. Without this option, individual FinCEN Identifier holders will be required to update their information in perpetuity regardless of whether the individual ceases to be a Company Applicant or Beneficial Owner. This is overly burdensome to individuals while providing FinCEN with no useful information. For example, Company Applicants who are no longer involved in forming or registering entities due to career change or retirement should be permitted to cancel their FinCEN Identifiers and be freed from a lifetime commitment to continual updating of required information. The Company Applicant would attest to the fact that, at the time of filing the FinCEN Identifier cancellation, they do not intend to act as a Company Applicant again and agree that if they will be acting as a Company Applicant in the future, they will either provide their personal information to a Reporting Company or obtain a new FinCEN Identifier.

There is no downside for FinCEN and its database in permitting FinCEN Identifier cancellations. The individual's agreement to provide updated information either directly to a reporting company or to apply for a new FinCEN Identifier (if FinCEN so permits) should the person be a Company Applicant in the future, ensures that FinCEN will always be provided with current information on the individual at the time of formation or registration. It also eases the substantial burden placed on individuals who obtain a FinCEN Identifier. It will also make the obtaining of a FinCEN Identifier a more viable option for individuals who will otherwise be reluctant to apply for one because of the lifetime updating obligation.

Instructions: A comprehensive set of instructions should accompany the online interface.

Several areas could benefit from explanations. For example, if FinCEN chooses to continue requiring individuals to update their FinCEN Identifier upon changes in their identifying information, instructions should clearly indicate that fact, including specific instructions on what information needs to be updated when changes occur in their government issued identification. Also, since the FinCEN Identifier application form can only be accessed by people who have login.gov accounts, FinCEN should explain what information will be required by individuals to set up a login.gov account and what protections will be put in place to prevent unauthorized use of the account.

Receipt of FinCEN Identifiers: Timing

The notice does not indicate when issuance of FinCEN Identifiers will begin, nor does it indicate the expected turnaround time once FinCEN Identifier requests are submitted. It would be advantageous if FinCEN Identifiers could be obtained in advance of January 1, 2024, in order for businesses to be better prepared for BOI reporting. Alternatively, it may be suitable if a FinCEN Identifier will be issued promptly upon submission of the required information.