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Via www.regulations.gov
and U.S. First Class Mail

April 9, 2025

The Honorable Scott Bessent
Secretary of the Treasury
c/o Director, FinCEN
Policy Division, P.O. Box 39
Vienna, VA 22183

Dear Mr. Secretary:

RE: Department of the Treasury Financial Crimes Enforcement Network Notice of Interim Final Rule and Request for Comments Titled "Beneficial Ownership Information Reporting Requirement Revision and Deadline Extension," Docket No. FINCEN-2025-0001, OMB Control No. 1506-0076, and RIN 1506-AB49, 90 *Fed. Reg.* 13688 (March 26, 2025)

This letter presents comments of the National Federation of Independent Business (NFIB)¹ in response to the Department of the Treasury Financial Crimes Enforcement Network (FinCEN) notice titled "Beneficial Ownership Information Reporting Requirement Revision and Deadline Extension" and published in the *Federal Register* of March 26, 2025. On March 2, 2025, the President stated that FinCEN's beneficial ownership information (BOI) reporting rules applicable to U.S. citizens were "outrageous and invasive," "an absolute disaster" for American small businesses, and an "economic menace," and would "soon be no more."² That same day, the Department of the

¹ NFIB is an incorporated nonprofit association representing small and independent businesses. NFIB protects and advances the ability of Americans to own, operate, and grow their businesses and ensures that the governments of the United States and the fifty States hear the voice of small business as they formulate public policies. The FinCEN beneficial ownership information reporting requirements applied to millions of small businesses, including NFIB members.

² <https://truthsocial.com/@realDonaldTrump/posts/114096106742782827> (Donald J. Trump: "Exciting news! The Treasury Department has announced that they are suspending all enforcement of the outrageous and invasive Beneficial Ownership Information (BOI) reporting requirement for U.S. Citizens. This Biden rule has been an absolute disaster for Small Businesses Nationwide. Furthermore, Treasury is now finalizing an Emergency Regulation to formally suspend this rule for American businesses. The economic menace of BOI reporting will soon be no more.") (visited April 3, 2025).

Treasury stated that, as a part of the President's agenda, the Department would issue a proposed rule to narrow the scope of the BOI reporting rules so that they applied to foreign reporting companies only, a move that you identified as a "victory for common sense."³

For five years, NFIB has fought every step of the way the BOI reporting law and rules in Congress, executive branch agencies, and the courts. NFIB was thus pleased that the President and you heard the voice of small business and halted FinCEN's collection of a vast domestic intelligence database on America's small business owners.

The FinCEN BOI reporting rules,⁴ issued under section 5336 of title 31 of the U.S. Code,⁵ compelled each of America's small businesses to report to FinCEN, without any requirement for a warrant, subpoena, or demonstrated suspicion or need for the information, the full legal name, date of birth, current address, and identification document number for every beneficial owner of the small business, defined to include anyone who either owns 25% or more of the business or "exercises substantial control" over the business. FinCEN, in turn, would use the resulting BOI database for law enforcement and intelligence activities and furnish the BOI under its protocols to the Internal Revenue Service; other federal, state, or tribal agencies; and even intelligence and law enforcement agencies of foreign countries. The President was absolutely right to characterize the FinCEN BOI database on U.S. citizens as "outrageous and invasive."

³ <https://home.treasury.gov/news/press-releases/sb0038> ("The Treasury Department is announcing today that, with respect to the Corporate Transparency Act, not only will it not enforce any penalties or fines associated with the beneficial ownership information reporting rule under the existing regulatory deadlines, but it will further not enforce any penalties or fines against U.S. citizens or domestic reporting companies or their beneficial owners after the forthcoming rule changes take effect either. The Treasury Department will further be issuing a proposed rulemaking that will narrow the scope of the rule to foreign reporting companies only. Treasury takes this step in the interest of supporting hard-working American taxpayers and small businesses and ensuring that the rule is appropriately tailored to advance the public interest. 'This is a victory for common sense,' said U.S. Secretary of the Treasury Scott Bessent. 'Today's action is part of President Trump's bold agenda to unleash American prosperity by reining in burdensome regulations, in particular for small businesses that are the backbone of the American economy.'") (visited April 3, 2025).

⁴ 31 CFR 1010.380 (as in force prior to interim final rule of March 26, 2025).

⁵ 31 U.S.C. 5336, enacted by section 6403(a) in title LXIV in Division F of Public Law 116-283 (January 1, 2021). To be clear, NFIB preserves its position, expressed in court and elsewhere, that both section 5336 and its implementing regulations exceeded constitutional limits on the power of the federal government, that Congress should repeal section 5336, and that the Department of the Treasury should revoke its implementing regulations.

The interim final rule stops FinCEN in its tracks when it comes to further collection of BOI data on U.S. citizens. Under section 5336(a)(11)(B)(xxiv) of title 31⁶ and the interim rule, the Secretary of the Treasury, with the written concurrence of the Attorney General and the Secretary of Homeland Security, has exempted from the BOI reporting requirement all domestic reporting companies and their beneficial owners.⁷ Further, the interim final rule exempts foreign reporting companies (the only companies to which the BOI reporting requirement still applies) and their U.S. person beneficial owners from the requirement to provide BOI on any U.S. persons who are beneficial owners of the foreign reporting company.⁸

NFIB appreciates very much the interim final rule as far as it goes, but NFIB urges the President and the Secretary of the Treasury to seek further protection for America's small businesses in two respects:

First, the Administration should urge Congress promptly to repeal section 5336 of title 31 of the U.S. Code or at least enact amendments to section 5336 that make permanent the temporary protection for America's small businesses afforded by the interim final rule. The relief afforded America's small businesses under the interim final rule depends on the exercise of statutory authority by the Secretary of the Treasury, the Attorney General, and the Secretary of Homeland Security, but Scott Bessent, Pam Bondi, and Kristi Noem will not hold those offices forever. Because nothing has changed in section 5336, their successors, most likely in a different Administration, could reverse the interim final rule's relief for America's small businesses with a few signatures from Government officers and a quick new

⁶ 31 U.S.C. 5336(a)(11)(B)(xxiv) ("The term "reporting company"-- . . . (B) does not include-- . . . (xxiv) any entity or class of entities that the Secretary of the Treasury, with the written concurrence of the Attorney General and the Secretary of Homeland Security, has, by regulation, determined should be exempt from the requirements of subsection (b) because requiring beneficial ownership information from the entity or class of entities--(I) would not serve the public interest; and (II) would not be highly useful in national security, intelligence, and law enforcement agency efforts to detect, prevent, or prosecute money laundering, the financing of terrorism, proliferation finance, serious tax fraud, or other crimes."). The preamble to the interim final rule states: "The Secretary, with the written concurrence of the Attorney General and the Secretary of Homeland Security, has determined for purposes of this interim final rule that the reporting of BOI by domestic reporting companies and their beneficial owners 'would not serve the public interest' and 'would not be highly useful in national security, intelligence, and law enforcement agency efforts to detect, prevent, or prosecute money laundering, the financing of terrorism, proliferation finance, serious tax fraud, or other crimes.'" 90 *Fed. Reg.* at 13691, col. 2.

⁷ See 31 CFR 1010.380(c) (interim final rule definition of "reporting company"), 90 *Fed. Reg.* at 13697, col. 2. See also, 90 *Fed. Reg.* at 13690, col. 2 (discussion of exemption of domestic reporting companies).

⁸ See 31 CFR 1010.380(d)(4)(i) and (d)(4)(ii), 90 *Fed. Reg.* at 13697, col. 3. See also, 90 *Fed. Reg.* at 13690, cols. 2 and 3 (discussion of exemption of foreign reporting company, and U.S. person beneficial owners of foreign reporting company, from duty to report BOI on any U.S. persons who are beneficial owners of the foreign reporting company).

rulemaking process. To prevent the Government in the future from administratively reinstituting FinCEN dragnet domestic intelligence collection on America's small businesses, **NFIB petitions the Department of the Treasury to recommend to Congress legislation the President judges "necessary and expedient"⁹ to repeal section 5336 of title 31 of the U.S. Code or, at a minimum, to amend section 5336 so that it applies only to foreign reporting companies and non-U.S. person beneficial owners and not to domestic reporting companies and U.S. person beneficial owners.**

Secondly, FinCEN should not use or disseminate, and should destroy, BOI that FinCEN already collected from millions of domestic reporting entities before the President determined it was "outrageous and invasive" for FinCEN to do so. The President and the Secretary of the Treasury should not allow FinCEN to use or disseminate that BOI from domestic reporting entities for any purpose and should order its destruction, to the maximum extent and in the manner permitted by law.¹⁰ Accordingly, **NFIB petitions the Department of the Treasury to revise the interim final rule in reaching a final rule by adding at the end of section 1010.380 of title 31 of the Code of Federal Regulations the following new subsection: "(h) *Corrective Action to Protect America's Small Businesses.* The Director of FinCEN shall (1) ensure that FinCEN does not use or disseminate any beneficial ownership information received under section 5336 of title 31 of the United States Code from a domestic reporting entity, (2) ensure that FinCEN expeditiously destroys, to the maximum extent and in the manner permitted by law, all beneficial ownership information received under section 5336 from a domestic reporting entity, and (3) report monthly in writing to the Secretary of the Treasury on FinCEN implementation of this subsection, until destruction of all beneficial ownership information received under section 5336 from a domestic reporting entity is complete."**

The program to compel the millions of American small businesses to report beneficial ownership information for a vast Government database for the Government to share with its tax, law enforcement, and intelligence agencies, with state and tribal governments, and even with foreign governments is a sad chapter in the history of FinCEN. FinCEN has broad and expanding intelligence functions, as is reflected in section 310 of title 31 of the U.S. Code and in the FinCEN statement on its website that its mission includes to "promote national security through strategic use of financial

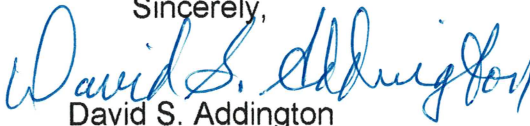
⁹ U.S. Constitution, article II, section 3 (authority of President with respect to Congress to "recommend to their Consideration such Measures as he shall judge necessary and expedient"); see Office of Management and Budget Circular A-19 (revised) (legislative coordination and clearance within Executive Branch).

¹⁰ See 44 U.S.C. 3301-3314 (process for destruction of records).

authorities and the collection, analysis, and dissemination of financial intelligence.”¹¹ Also, FinCEN’s resources have more than quintupled in the past 25 years.¹² With the expansion of its intelligence mission and the growth of its resources, FinCEN has become a major intelligence agency. To help ensure that the institutional culture of FinCEN does not again turn to large scale spying on Americans, the Secretary of the Treasury should ask the President to exercise his authority both under section 3003(4)(L) of title 50 of the U.S. Code and section 3.5(h)(16) of Executive Order 12333, as amended, to designate FinCEN as an element of the intelligence community, making FinCEN subject to the special safeguards that apply to such elements.

NFIB appreciates the opportunity to comment on the interim final rule and respects the Administration’s efforts to protect the freedom and privacy of America’s small businesses.

Sincerely,



David S. Addington

Executive Vice President and General Counsel

cc: The Honorable Pamela J. Bondi
Attorney General of the United States
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The Honorable Kristi L. Noem
Secretary of Homeland Security
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The Honorable Russell T. Vought
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¹¹ <https://www.fincen.gov/about/mission> (“The mission of the Financial Crimes Enforcement Network is to safeguard the financial system from illicit activity, counter money laundering and the financing of terrorism, and promote national security through strategic use of financial authorities and the collection, analysis, and dissemination of financial intelligence.”) (visited April 3, 2025).

¹² See, Consolidated Appropriations Act, 2001, Public Law 106-554 (December 21, 2000) (FinCEN annual appropriation \$37,576,000); Consolidated and Further Continuing Appropriations Act, 2015, Public Law 113-235 (December 16, 2014) (FinCEN annual appropriation \$112,000,000); Consolidated Appropriations Act, 2020, Public Law 116-93 (December 20, 2019) (FinCEN annual appropriation \$126,000,000); and Further Consolidated Appropriations Act, 2024, Public Law 118-47 (March 23, 2024) (FinCEN annual appropriation \$190,193,000).