

# PUBLICATION

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## Final Rule on Required Reporting by Companies of Beneficial Ownership Information Under the Corporate Transparency Act

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**On September 29, 2022, the U.S. Treasury Department's Financial Crimes Enforcement Network (FinCEN) issued its Final Rule on Beneficial Ownership Requirements. This rule, which becomes effective as of January 1, 2024, applies to the new Beneficial Ownership Information Reporting Requirements (BOI Reporting Requirements) for domestic and foreign companies doing business in the U.S. and is set forth in Section 6403 of the Corporate Transparency Act (CTA). This alert points out the amendments made to FinCEN's prior proposals discussed in our alert on February 7, 2022.**

Although the rule is adopted largely as proposed, FinCEN has made certain amendments with respect to the time frames of reporting obligations. The 30-day deadline shall now apply to initial reports by newly created or registered entities, updated reports, and corrected reports. The Final Rule also removes the requirement that entities created before the effective date of the regulations report company applicant information. Newly created entities will still be required to report company applicant information, but they will not be required to update it.

In addition, FinCEN has made several modifications to the ownership interest and substantial control definitions to enhance clarity and to facilitate compliance by reporting companies.

This Final Rule is the first of three rulemakings to implement the requirements of Section 6403. A second rulemaking will be issued to implement the statute's protocols for access to and disclosure of Beneficial Ownership Information, and a third will revise the existing customer due diligence requirements for financial institutions at 31 CFR 1010.230 consistent with the requirements of this Final Rule.

The goal of implementing these BOI Reporting Requirements falls within the overall purpose of the CTA to prevent and combat money laundering, terrorist financing, corruption, tax fraud, and other illicit activity, while minimizing the burden on entities doing business in the United States.

### What does the CTA accomplish through the BOI Reporting Requirements?

The CTA requires FinCEN to establish and maintain a national registry of "Beneficial Owners" and "Company Applicants" for entities that are deemed "Reporting Companies." This registry will be accessible (with limited access and through "appropriate protocols") to state, federal, and international law enforcement agencies and certain financial institutions to further the purposes of the CTA. Information will not be available to the general public or accessible through Freedom of Information Act requests. Despite the public access limitation, some commenters expressed privacy and security concerns with respect to personally identifiable information. In response, FinCEN hinted at proposing future rules to establish who can access the beneficial ownership information and safeguard the information's security.

### What Entities Are Reporting Companies?

The Final Rule categorizes Reporting Companies into *domestic Reporting Companies* and *foreign Reporting Companies*. It defines a domestic Reporting Company as an entity that is (a) a corporation, (b) a limited liability company, or (c) created by the filing of a document with a secretary of state or any similar office under the law

of a state or Native American tribe. A foreign Reporting Company is also defined as any entity that is (a) a corporation, limited liability company, other entity, (b) formed under the law of a foreign country, and (c) registered to do business in any state or tribal jurisdiction by the filing of a document with a secretary of state or any similar office under the law of a state or Native American tribe.

**Exemptions:** The Final Rule exempts 23 specific entities from the definition of a Reporting Company. These include (a) public companies under the Securities Exchange Act of 1934; (b) churches, charities, nonprofit entities, and any other entity that qualifies for tax-exempt status under relevant sections of the Internal Revenue Code; and (c) other types of companies that have existing reporting obligations to governmental entities (for example, insurance companies, banks, federal or state credit unions, investment companies, registered public accounting firms, and public utilities).

**Large Operating Company Exemption:** One other noteworthy exemption is for entities that employ more than 20 employees on a full-time basis in the U.S.; filed in the previous year federal income tax returns in the U.S. demonstrating more than \$5,000,000 in gross receipts or sales in the aggregate, including the receipts or sales of other entities owned by the entity, and other entities through which the entity operates; and have an operating presence at a physical office within the U.S.

### Who Is a Company Applicant?

"Company Applicant" means, for a domestic Reporting Company, any individual who files the document that creates the domestic Reporting Company, and for a foreign Reporting Company, any individual who files the document that first registers the foreign Reporting Company to do business in the U.S. This definition also includes any individual who directs or controls the filing of such documents by another person. Existing entities formed or registered before the effective date of the Final Rule must report the fact of prior registration but are not required to report company applicant information. As noted in the Final Rule's publication, these entities would be formed or registered before the Final Rule's effective date and thus, by the time the Final Rule takes effect, they would have no Company Applicant to report.

### What Is Required to Be Reported?

The Final Rule requires a Reporting Company to provide initial reports, update the initial reports when changes occur, and correct the initial reports when it detects any inaccuracy. The initial reports concerning a Report Company must include:

- Full legal name, and if any, any trade name or "doing business as" name;
- For a Reporting Company with a principal place of business in the U.S., the street address of such principal place of business, and in all other cases, the street address of the primary location in the U.S. where the Reporting Company conducts business;
- The state, tribal, or foreign jurisdiction of formation. A foreign Reporting Company should additionally include the U.S. state or tribal jurisdiction where such company first registers; and
- Taxpayer Identification Number (TIN) (including an Employer Identification Number (EIN)) of the Reporting Company, or a tax identification number issued by a foreign jurisdiction and the name of such jurisdiction if a foreign Reporting Company does not have a TIN.

Regarding each Beneficial Owner and Company Applicant, a Reporting Company must report the following:

- Full legal name;

- Date of birth;
- For a Company Applicant who forms or registers an entity in the course of such Company Applicant's business, the street address of such business. In any other case, the individual's residential street;
- A unique identifying number and the issuing jurisdiction from a non-expired U.S. passport, state, local government or Native American tribe identification document, state driver's license, or a foreign passport, if the individual does not have any of these documents; and
- An image of the document containing the unique identifying number.

### Who Is a Beneficial Owner?

"Beneficial Owner" means, with respect to a Reporting Company, any individual who, directly or indirectly, either exercises "Substantial Control" over such Reporting Company or owns or controls at least 25 percent of the "Ownership Interests" of such Reporting Company. Reporting Companies are required to identify any individual who satisfies either the Substantial Control or Ownership Interest test under this definition, unless the individual is excluded from the definition of "Beneficial Owner." Reporting Companies are expected to identify at least one Beneficial Owner under the "Substantial Control" test, even if other individuals fail to satisfy the "Ownership Interests" test.

**Exceptions:** Exceptions to the definition of "Beneficial Owner" include minor children, individuals acting as a nominee, intermediary, custodian, or agent on behalf of another individual, employees whose control is solely derived from employment status, prospective ownership through inheritance, and creditors of the entity unless otherwise meeting the requirements of a Beneficial Owner.

**Substantial Control:** The Final Rule provides three specific indicators of Substantial Control: (1) service as a senior officer of a Reporting Company; (2) authority over the appointment or removal of any senior officer or dominant majority of the board of directors (or similar body) of a Reporting Company; and (3) direction, determination, or decision of, or substantial influence over, important matters of a Reporting Company. The Final Rule also provides a catch-all category for any person who exercises "any other form of substantial control over the reporting company."

**Ownership Interests:** Ownership Interests include equity in the Reporting Company and other types of interests, such as capital or profit interests or convertible instruments, warrants or rights, or other options or privileges to acquire equity, capital, or other interests in a Reporting Company.

### What Is the Time Frame for Compliance?

- **Existing Companies:** Any Reporting Company formed or registered before January 1, 2024, must submit an initial report within one (1) year of the effective date of the Final Rule (January 1, 2025).
- **New Companies:** Any Reporting Company formed or registered on or after January 1, 2024, must submit an Initial Report **within 30 days** of the date which is the earlier of (1) the Reporting Company receiving actual notice of its creation or registration becoming effective; or (2) a secretary of state or similar office first providing public notice that the Reporting Company has been created or registered.
- **Changes in Beneficial Ownership:** For any change in the information described in the report (including if a Reporting Company becomes exempt or a previously exempt entity loses its exempt status), a Reporting Company must submit a report that updates the information relating to the change **within 30 calendar days of the change**.

## What Are the Penalties for Non-Compliance?

- For willfully providing, or attempting to provide, false or fraudulent BOI or willfully failing to report (or provide an updated report), the fines/penalties are:
  - Civil monetary penalties of \$500 for each day that the violation continues or has not been remedied; and
  - Criminal penalties of not more than \$10,000, imprisonment of not more than two years, or both.
- There is a Safe Harbor for persons acting in good faith to correct inaccurate information submitted within 90 days of the inaccurate report.

For more information, contact [Daniel Moss](#), [Maximilian Oehlschlaegel](#) or your Baker Donelson [Business and Corporate](#) Group attorney.