

Beneficial Ownership under FinCEN's Final Rule

On 9/29/22 FinCEN issued the very anticipated [Final Rule](#) establishing a beneficial ownership information reporting requirement, pursuant to the bipartisan Corporate Transparency Act (CTA). The [Final Rule](#) will require most corporations, limited liability companies, and other entities created in or registered to do business in the United States to report information about their beneficial ownership. The Beneficial Ownership Information (BOI) reporting provisions of the CTA proposed rule is designed to protect the US financial system from illicit use and impede malign actors from abusing legal entities, including shell companies, to conceal proceeds of corrupt/criminal acts. Reporting companies (domestic and foreign) ought to make sure that they will be ready to comply with the Final Rule by its effective date of January 1, 2024, to identify the beneficial owners of an entity and the company applicants of an entity.

The goal of the Beneficial Ownership Rule

To collect information and provide access to law enforcement, financial institutions, and other authorized users to combat corruption by covering:

- who must report beneficial ownership information
- when they must report
- what information they must provide

The CTA

The CTA is a [recent reporting requirement](#) that is expected to enhance U.S. national security through increasing the difficulty involved for harmful actors to exploit opaque legal structures for laundering money, financing terrorism, proliferating weapons of mass destruction, trafficking humans, and drugs, and committing tax fraud and other crimes.

Included in the AML Act of 2020 which became law on January 1, 2021, it amends the Bank Secrecy Act to require corporations, limited liability companies, and similar entities to report certain information about their beneficial owners (the individual natural persons who ultimately own or control the companies).

The CTA requires FinCEN to maintain the reported beneficial ownership information in a confidential, secure, and non-public database, authorizes FinCEN to disclose beneficial ownership information subject to appropriate protocols and for specific purposes to several categories

of recipients, such as federal law enforcement, requires FinCEN to revise existing financial institution customer due diligence regulations concerning beneficial ownership through considering the direct reporting of beneficial ownership information, brings the U.S. into coordination with international AML/CFT standards, sets a clear federal standard for incorporation practices, protects vital U.S. national security interests, protects interstate and foreign commerce and enables critical national security, intelligence, and law enforcement efforts to counter money laundering, the financing of terrorism, and other illicit activities.

Two types of Reporting Companies:

- Domestic company: a corporation, limited liability company, or any other entity created by the filing of a document with a secretary of state or similar office under the law of a state or Indian tribe.
- Foreign company: a corporation, limited liability company, or other entity formed under the law of a foreign country and that is registered to do business in any state or tribal jurisdiction.

Reporting Companies include:

Limited liability partnerships, limited liability limited partnerships, business trusts, and most limited partnerships, in addition to corporations and LLCs (entities generally created by a filing with a secretary of state or similar office).

Reporting Companies excluded:

Certain trusts are excluded from the definition to the extent that they are not created by the filing of a document with a secretary of state or similar office. FinCEN recognizes that in many states the creation of most trusts typically does not involve the filing of such a formation document.

A Beneficial Owner includes any individual who, directly or indirectly, either:

- exercises substantial control over a reporting company, or
- owns or controls at least 25 percent of the ownership interests of a reporting company

5 Exceptions to the definition of Beneficial Owner

1. a minor child, provided that a parent or guardian's information is reported
2. an individual acting as a nominee, intermediary, custodian, or agent on behalf of another individual
3. an individual acting solely as an employee of a reporting company in specified circumstances
4. an individual whose only interest in a reporting company is a future interest through a right of inheritance
5. a creditor of a reporting company

Company Applicants are only 2 persons:

- the individual who directly files the document that creates the entity (in the case of a foreign reporting company, the document that first registers the entity to do business in the United States).
- the individual who is primarily responsible for directing or controlling the filing of the relevant document by another.

BOI Information Reports

- A reporting company has to identify itself and report four pieces of information about each of its beneficial owners and company applicants: name, birthdate, address, and a unique identifying number from an acceptable identification document (and the image of such document).
- Reporting companies created after January 1, 2024, have to provide the four pieces of information and document image for company applicants.

- If an individual provides their four pieces of information to FinCEN directly, the individual may obtain a "FinCEN identifier," which can then be provided to FinCEN on a BOI report in lieu of the required information about the individual.

Timing

- Reporting companies created or registered before January 1, 2024, will have one year (until January 1, 2025) to file their initial reports, while reporting companies created or registered after January 1, 2024, will have 30 days after receiving notice of their creation or registration to file their initial reports.
- Reporting companies have 30 days to report changes to the information in their previously filed reports and must correct inaccurate information in previously filed reports within 30 days of when the reporting company becomes aware or has reason to know of the inaccuracy of information in earlier reports.

Buckle up! There is More coming:

The BOI reporting rule is one of three rulemakings planned to implement the CTA. FinCEN will engage in additional rulemakings to:

- establish rules for who may access BOI, for what purposes, and what safeguards will be required to ensure that the information is secured and protected
- revise FinCEN's customer due diligence rule following the promulgation of the BOI reporting final rule.
- continue to develop the infrastructure to administer these requirements in accordance with the strict security and confidentiality requirements of the CTA, including the information technology system that will be used to store beneficial ownership information: the Beneficial Ownership Secure System (BOSS).

Will you be ready for the Beneficial Ownership Final Rule?

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