

FinCEN Issues Final Rule Implementing Beneficial Owner Reporting Under Corporate Transparency Act

What You Need to Know

On September 29, 2022, the U.S. Treasury Department's Financial Crimes Enforcement Network (FinCEN) issued its final rule regarding the reporting of beneficial ownership information under the Corporate Transparency Act (CTA). Enacted on January 1, 2021, the CTA is an effort to combat money-laundering schemes by illicit actors whose identities have been or may be obfuscated by the use of shell and front companies. Following the CTA's enactment, FinCEN proposed rules for the implementation of the CTA's beneficial ownership information reporting requirements. The proposed rules were submitted for and subject to broad commentary over the past (almost) two years.

The final Beneficial Ownership Information Reporting Rule provides that entities deemed "reporting companies" must identify and report to FinCEN certain "beneficial owners" and company applicants within a period of time of the entities' formation, with a requirement to update this reporting when the beneficial owner information changes. Essential information regarding the terms of the rule follows.

Reporting Companies

Most business entities will be required to report to FinCEN, including:

Despite the multitude of companies with reporting requirements under these definitions, there are 23 types of entities that are exempt from reporting. Among many others, these include banks, companies subject to Securities Exchange Commission (SEC) oversight, and large operational companies, as defined within the Beneficial Ownership Information Reporting Rule. These exemptions are not addressed at length in this Alert however they should be considered prior to filing the initial report, as such filing may not be necessary.

Information for Initial Reporting

The initial report to FinCEN is required to include the following information:

Beneficial Owners

With respect to a reporting company, "beneficial owner" is defined as any individual who:

The rule includes five exceptions to these two categories, which generally include minor children; agents on behalf of other individuals; employees that are not senior officers; individuals holding future interests through inheritance rights; and creditors.

"Substantial control" for the purposes of the regulation means that the individual:

The exercise of "substantial control" can be direct or indirect, including as a trustee of a business trust, or, for example, through board representation, ownership or control of majority voting power, rights associated with financial interests in the company, control over an intermediary entity that has substantial control over the reporting company, formal or informal arrangements/relationships whereby the individual acts as a nominee, or "any other contract, arrangement, understanding, relationship, or otherwise."

"Ownership interest" is also broadly defined to include the widest variety of ways in which an individual can "own" a reporting company, including but in no way limited to, through stock or equity; voting trust certificates; capital or profit interests; instruments convertible into shares or other rights to purchase, sell, or subscribe; any put/call or other option of buying or selling (except to the extent that the option is in a third party without their knowledge or involvement in the company); or any other contract, instrument, understanding or other mechanism used to establish ownership.

"Control of ownership interest" is also a broadly defined term meant to encapsulate as many of, if not all, possible arrangements by which an individual owns or controls ownership interest in a company through any "contract, arrangement, understanding, relationship, or otherwise."

The rule likewise contains a detailed explanation of the calculation of the 25% ownership interest, to clarify at what point in time and which factors must be considered in the calculus. This should be examined closely prior to disclosure of the beneficial owners.

It should be noted that in addition to beneficial owners, the reporting company's "company applicant" must also be reported. The company applicant is the individual who directly files the document that created the domestic company or who first registers the foreign entity in the United States. It also includes the individual primarily responsible for directing or controlling that filing.

Timeline for Initial Reporting

Updating Reports

Once a reporting company submits beneficial owner information to FinCEN, it will receive a unique FinCEN identifier/identifying number to demonstrate the company's compliance and facilitate future reporting.

Next Steps

Forms for reporting are not yet available, and FinCEN will submit same for public comment prior to their publication, and for use well in advance of the effective date of the reporting rule.

While this Alert outlines the immediately important aspects of FinCEN's final rule, it is not comprehensive as to all nuances of the various beneficial owner reporting requirements and reporting exemptions. For questions related to your company's beneficial ownership, necessary reporting or exemptions thereto, please contact the author of this Alert.



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