



FinCEN Issues Final Rule for Beneficial Ownership Reporting: Most Small Companies Will Be Required to Report Owner and Manager Names

OCTOBER 2022

By Robert Loesch, Glenn Morrical, and Kristen Baracy

On September 29, 2022, the Financial Crimes Enforcement Network (“FinCEN”), administered by the U.S. Department of the Treasury, issued a [final rule](#) (the “Rule”) implementing the Corporate Transparency Act’s (“CTA”) beneficial ownership information reporting provisions. The Rule, which serves as a historic move to counteract illicit use of the U.S. financial system, is a product of the combined efforts of Congress, the Treasury, national security agencies, law enforcement, and other stakeholders “to bolster corporate transparency while minimizing the impact of compliance on honest businesses,” according to Secretary of the Treasury Janet L. Yellen. The Rule requires that reporting entities disclose their beneficial ownership information in a report submitted to FinCEN when they are formed or registered on or after January 1, 2024, and by January 1, 2025, for reporting entities formed or registered before January 1, 2024.

The Rule exempts several types of entities from the reporting requirements, including “large operating companies” – meaning those companies with more than 20 U.S. full-time employees – an operating presence in a U.S. based physical office, and more than \$5 million in gross receipts or sales, as reflected on their tax documents filed in the U.S. The brunt of the Rule will fall on “mom-and-pop” companies and early-stage companies that have yet to reach 20 employees or \$5 million in sales.

Background

The CTA, part of the Anti-Money Laundering Act of 2020, established beneficial ownership reporting requirements for certain types of corporations, limited liability companies, and other similar entities created in or registered to conduct business in the United States. Prior to adopting the Rule, FinCEN received public comments from a broad array of individuals and organizations, including members of Congress, government officials, groups representing small business interests, corporate transparency advocacy groups, the financial industry, trade associations representing that industry’s members, law enforcement representatives, and other interested groups and individuals.

Purpose

The Rule requires certain entities organized or registered to conduct business in the U.S. to disclose beneficial ownership information (“BOI”) by filing a BOI report with FinCEN. Illicit actors often exploit corporate structures, using entities such as shell and front companies, to obscure their identities and circulate ill-gotten gains from criminal activity throughout the U.S. economy. According to FinCEN, the Rule will make it more difficult for illicit actors to use shell and front companies to launder money, hide assets, and defraud employees and customers. FinCEN touts the Rule as a major step by the federal government to strengthen the integrity and security of the U.S. financial system.

Beneficial Ownership Disclosure

The [Beneficial Ownership Information Reporting Rule Fact Sheet](#) captures the key elements of the Rule, which are described below:

I. Reporting Companies. The Rule applies to reporting companies, which are classified as either domestic or foreign companies.

i. Domestic Reporting Companies: Any corporation, limited liability company (“LLC”), or other entity created by the filing of a document with a secretary of state or any similar office under the law of a state of the United States or Indian tribe. FinCEN expects this would include (subject to applicability exemptions) limited liability partnerships, limited liability limited partnerships, business trusts, and limited partnerships, in addition to corporations and LLCs, as such entities are generally created by a filing with a secretary of state or similar office. Entities not created by such filings, including certain types of trusts, sole proprietorships, and general partnerships, would, generally, be excluded from this definition.

ii. Foreign Reporting Companies: Any corporation, LLC, or other entity formed under the law of a foreign country that is registered to do business in any state of the United States or Indian tribe.

II. Exempted Entities. Under the Rule, there are 23 types of entities exempt from the definition of reporting companies, which include:

- U.S. Securities and Exchange Commission (“SEC”) reporting issuers;
- Banks and their holding companies;
- Credit unions;
- Certain tax-exempt entities and certain U.S. persons that assist such entities;
- Money services businesses registered with FinCEN;

- Registered broker-dealers, securities exchanges, or clearing agencies, and other Exchange Act registered entities;
- U.S. governmental authorities;
- “Large operating companies,” meaning those with more than 20 U.S. full-time employees, an operating presence at a U.S.-based physical office, and more than \$5 million in gross receipts or sales from within the U.S, as reflected on their tax documents filed in the U.S.;
- Registered investment companies and registered investment advisers;
- Venture capital fund advisers;
- Pooled investment vehicles operated or advised by a bank, credit union, registered broker-dealer, registered investment company, registered investment adviser, or venture capital fund adviser;
- Insurance companies and state licensed insurance providers;
- Commodity Exchange Act registered entities;
- Accounting firms registered under Section 102 of the Sarbanes-Oxley Act of 2002;
- Public utilities;
- Financial market utilities designated by the Financial Stability Oversight Council (such as The Clearing House Payments Company or The Depository Trust Company);
- Subsidiaries of certain exempt entities; and
- Inactive entities that were in existence on or before January 1, 2020, and meet other requirements.

In applying the definition of “large operating company,” the Rule specifies the use of consolidated revenues (from U.S. sources) as shown in federal tax filings, but it prohibits combining the employee headcounts of different entities, even if they are all under the control of a common parent company. But a subsidiary of a “large operating company” should be able to rely on the exemption for subsidiaries of certain exempt companies.

III. Beneficial Owners. A beneficial owner is any individual who either (1) exercises substantial control over a reporting company, or (2) owns or controls at least 25 percent of the ownership interests of a reporting company. The Rule includes only limited exemptions from this definition, as directed by the CTA, including those for minors, nominees, and custodians.

The Rule sets forth a range of activities in determining whether an individual exercises substantial control, but it can be summed up as anyone who determines the outcome, or has substantial influence, in making important decisions on behalf of the entity. Because this concept does not require absolute control, control may be (and most likely will be) shared among several individuals, each of whom must be reported. Similarly, the Rule also provides standards and mechanisms for determining whether an individual owns or controls 25 percent of the ownership interests of a reporting company. Ownership of economic rights of

at least 25% establishes control even if those rights do not possess voting rights of at least 25%. Options to acquire an ownership interest must be included in the calculation on the assumption they have been exercised.

IV. Company Applicants. A person is a “company applicant” if they fit either or both of two categories:

- i. The individual who directly files the document that creates the entity, or in the case of foreign reporting companies, the document that first registers the entity to do business in the U.S.;
- ii. The individual who is primarily responsible for directing and controlling the filing of the relevant document by another (if more than one individual is involved in the filing).

The Rule does not require reporting companies existing or registered before January 1, 2024, to identify and report their company applicants. Additionally, reporting companies formed or registered after January 1, 2024, will be required to report company applicant information, but they will not be required to update company applicant information.

V. BOI Reports. When filing BOI reports with FinCEN, the Rule requires a reporting company to identify itself and report **four items of information about each of its beneficial owners and company applicants**:

- i. Name;
- ii. Birthdate;
- iii. Address; and
- iv. A unique identifying number and issuing jurisdiction from an acceptable identification document (and an image of such document).

The Rule requires that reporting companies created after January 1, 2024, provide the four items of information and document image for company applicants. Also, if an individual provides his or her four items of information to FinCEN directly, the individual may obtain a “FinCEN identifier,” which can be provided to FinCEN on a BOI report in lieu of the required information about the individual.

VI. Timing. The effective date for the Rule is January 1, 2024. Reporting companies created or registered before that date will have one year (until January 1, 2025) to file their initial BOI reports, while reporting companies created or registered after the effective date will have 30 days after receiving notice of their creation or registration to file their initial BOI reports. Reporting companies will also have 30 days to report changes to information in their previously filed BOI reports and must correct reported inaccurate information within 30 days

when they become aware or have reason to know of any inaccurate information previously reported.

The Rule is the first of three rulemakings planned by FinCEN to implement the CTA. Additional rulemakings are forthcoming to establish who may access BOI and for what purposes, as well as rules establishing safeguards to ensure the BOI submitted to FinCEN is secured and protected. FinCEN plans to publish BOI reporting forms in the Federal Register for public comment in advance of the Rule effective date and will supply other compliance and guidance documents to assist companies in meeting their reporting obligations.[1]

[1] This Client Alert was prepared with the invaluable assistance of Tucker Ellis Law Clerk **Sierra Lipscomb**.

Additional Information

For more information, please contact:

- [Kristen A. Baracy](mailto:kristen.baracy@tuckerellis.com) | 213.430.3603 | kristen.baracy@tuckerellis.com
- [Jayne E. Juvan](mailto:jayne.juvan@tuckerellis.com) | 216.696.5677 | jayne.juvan@tuckerellis.com
- [Robert M. Loesch](mailto:robert.loesch@tuckerellis.com) | 216.696.5916 | robert.loesch@tuckerellis.com
- [Glenn E. Morrival](mailto:glenn.morrical@tuckerellis.com) | 216.696.3431 | glenn.morrival@tuckerellis.com

This Client Alert has been prepared by Tucker Ellis LLP for the use of our clients. Although prepared by professionals, it should not be used as a substitute for legal counseling in specific situations. Readers should not act upon the information contained herein without professional guidance.