



~ Corporate Transparency Act Beneficial Owner Information Reporting

On September 29, 2022, the Financial Crimes Enforcement Network (“FinCEN”) issued a final rule (the “Rule”) about the beneficial ownership information reporting rules of the Corporate Transparency Act of 2021 (“CTA”). The Rule—located at 31 C.F.R. § 1010.380—describes which “reporting companies” must provide information to FinCEN about the company, its “beneficial owners,” and its “company applicants.” The goal of the CTA and the Rule is to help national security, intelligence, and law enforcement agencies prevent “drug traffickers, fraudsters, corrupt actors such as oligarchs, and proliferators from laundering or hiding money and other assets in the United States” from using shell and front companies.

FinCEN drafted the Rule and its definitions broadly. When the reporting obligations take effect on January 1, 2024, they will require most corporations, limited liability companies, and other entities created in or registered to do business in the United States to file these information reports. FinCEN estimates that at least 32.6 million entities will meet the definition of a “reporting company” that must file the information reports under the Rule.

Who must report?

The information reports under the Rule must be filed by any entity that meets the definition of a “reporting company” and that does not qualify for an exemption. The Rule will affect both United States entities and foreign entities that are transacting business in the United States. This includes any United States entity created by the filing of a document with a secretary of state, similar office of any state, or other governmental agency. It also includes any foreign entity (an entity formed under the laws of a foreign country) that is registered to do business in the United States by the filing of a document with the secretary of state or similar office.

If a reporting company is required to file a report to FinCEN, then it must include specific information about the reporting company, its “beneficial owners,” and its “company applicants” (if applicable).

While the Rule requires a broad range of entities that are defined as “reporting companies” to file an information report, it also exempts 23 specific types of entities from the reporting requirements. Some types of entities that are exempted are in highly-regulated industries such as insurance, banking, utilities, accounting, and more. “Large operating companies”—generally an entity with more than 20 full-time employees in the United States or its territories, an operating presence at a physical office in the U.S., and more than \$5 million in gross receipts or sales—are also exempt under the rule. In addition, tax-exempt companies meeting certain criteria are exempt under the rule. An entity that is a subsidiary of certain types of exempt entities also may be exempt from the reporting requirements under the rule. For more details about the criteria used to determine which entities are exempt from the reporting requirements under the Rule, please refer to section 1.2 of FinCEN’s [Small Entity Compliance Guide](#).

What information must be reported?

A range of information will need to be reported to FinCEN under the Rule about the reporting company, its "beneficial owners," and its "company applicants" (if applicable).

The reporting company must report information about itself, including:

- The full legal name of the reporting company;
- Any trade name or "doing business as" name of the reporting company;
- Complete current address of its principal place of business or primary location in the United States (not a P.O. box or address of a registered agent);
- The state or other jurisdiction of formation of the reporting company (and, for a foreign reporting company, the state or other jurisdiction where the company first registered to do business in the U.S.); and
- The IRS Taxpayer Identification Number.

The Rule defines "beneficial owner" broadly. A beneficial owner is any individual who directly or indirectly either: (i) exercises substantial control over the reporting company or (ii) owns or controls at least 25% of the ownership interests of the reporting company.

First, any individual who directly or indirectly exercises "substantial control" over the reporting company is a beneficial owner under the Rule. Substantial control under the Rule means that an individual: (i) serves as a senior officer (*e.g.*, president, chief financial officer, general counsel, chief executive officer, chief operating officer, or other officer who performs a similar function as these officers) of the reporting company; (ii) has authority over the appointment or removal of any senior officer or a majority of the board of directors (or similar body) of the reporting company; (iii) directs, determines, or has substantial influence over important decisions made by the reporting company; or (iv) has any other form of substantial control over the reporting company. The Rule states that substantial control can be exercised directly or indirectly by an individual, through "formal or informal arrangements" with other individuals, including as a trustee of a trust or similar arrangement.

Second, any individual who directly or indirectly owns or controls at least 25% of the ownership interests of the reporting company is a beneficial owner under the Rule. The Rule provides several steps and formulas to determine whether the total ownership interests that an individual owns or controls, directly or indirectly, equals or exceeds 25% of the total ownership interests of the entity. The broad definition of ownership interest casts a wide net, including not only ownership of equity or capital and profit interests, but also extending to ownership of convertible interests (such as a warrant) and options. In addition, the Rule treats options, warrants, or other similar interests as if they had been exercised for purposes of the calculation. If any individual owns at least 25% of the total voting power or the total value of the entity, that individual is a beneficial owner for purposes of the Rule.

With respect to any trust that holds an ownership interest in a reporting company, an individual may directly or indirectly control an ownership interest, for example: (i) as a trustee of the trust or other individual with authority to dispose of trust assets; (ii) as a beneficiary of the trust who is the sole permissible recipient of income and principal from the trust; (iii) as a beneficiary of the trust who has the right to demand a distribution of or withdraw substantially all of the assets from the trust; or (iv) as a grantor or settlor of the trust who has the right to revoke the trust or otherwise withdraw the assets of the trust. Please note that these are just examples of when an individual may directly or indirectly own or control at least 25% of the ownership interests of a reporting company held in a trust—it is not an exclusive list. A reporting company should seek legal advice with respect to whom the beneficial owners of the company are when a trust holds an ownership interest in the company.

There are five exceptions to the definition of “beneficial owner” under the Rule (see section 2.4 of FinCEN’s [Small Entity Compliance Guide](#)). First, if the individual is a minor child (as defined under the law of the state or tribe in which the domestic reporting company is created), the reporting company may instead report information about the parent or legal guardian of the minor child. When that child reaches the age of majority, the exception no longer applies, and the reporting company must file an updated beneficial ownership information report. Second, if an individual merely acts on behalf of an actual beneficial owner as his or her nominee, intermediary, custodian, or agent, then that individual qualifies for an exception (the actual beneficial owner still must be reported). Third, if an individual’s substantial control over or economic benefits from the reporting company are derived solely from the employment status of the individual as an employee, and that individual is not a senior officer, then that individual qualifies for an exception. Fourth, an individual whose only interest in a reporting company is a future interest through a right of inheritance qualifies for an exception (after that individual receives the interest in the reporting company, this exception no longer applies). Fifth, a creditor of the reporting may qualify for an exception if certain criteria apply.

The Rule also defines “company applicant” broadly. Any individual who directly files the document first forming or registering a reporting company is a company applicant under the Rule and must be included in the reporting if the reporting company is created in the United States or first registered to do business in the United States on or after January 1, 2024. But the definition goes further, deeming any individual who is “primarily responsible for directing or controlling” the filing of the creation or first registration document to be a company applicant.

A reporting company must report certain information about any beneficial owner or any company applicant, including:

- Full legal name;
- Date of birth;
- Complete current residential street address; and
- The unique identifying number and issuing jurisdiction from, and the image of, one of the following non-expired documents: (i) a state driver’s license; (ii) an identification document issued by a state, local government, or tribe; (iii) a U.S. passport; or (iv) if an individual does not have any of the previous documents, a foreign passport.

It may be challenging for a reporting company to collect these details about each individual who is a beneficial owner or company applicant and to keep informed when this information changes (such as when one of these individuals moves to a different residential street address or receives a new state driver’s license number). Changes must be reported to FinCEN within 30 days of the reporting company becoming aware of the change (or if the reporting company discovers that the reported information is incorrect). In addition, if an individual is a beneficial owner or company applicant with respect to more than one reporting company, it could be time-consuming and repetitive for the individual to separately provide that same information to each reporting company and to keep each reporting company updated about any changes to that information.

Instead, a more efficient and practical option to consider is having the individual provide the same information specified in the bullet points listed above directly to FinCEN and request a “FinCEN identifier”—a unique identifying number for that individual. Individuals will be able to request a FinCEN identifier on or after January 1, 2024, by completing an online form on the FinCEN website: <https://www.fincen.gov/boi>. After obtaining an individual’s FinCEN identifier, a reporting company may use it to report that individual as a beneficial owner or company applicant instead of reporting the information specified in the bullet points listed above for that individual. With a FinCEN identifier, if any of the information specified in the bullet points listed above changes for that individual (or if the individual discovers that the reported information is incorrect), then that individual must update that information with FinCEN within 30 days.

When must reports be filed?

FinCEN will begin accepting beneficial ownership information reports starting on January 1, 2024, when the Rule takes effect. Reports can be filed on the FinCEN website: <https://www.fincen.gov/boi>

- Any reporting company created or registered prior to January 1, 2024, will have one year—until January 1, 2025—to file its initial report;
- Any reporting company created or registered on or after January 1, 2024, and before January 1, 2025, must file its initial report within 90 days of receiving notice of the company's creation or registration; and
- Any reporting company created or registered on or after January 1, 2025, must file its initial report within 30 days of receiving notice of the company's creation or registration.

The reporting requirements do not stop after the filing of the initial report, however, as reporting companies have an ongoing obligation to maintain the accuracy of their reports. If any of the information filed in the initial report changes or if the reporting company becomes aware of inaccurate information, then the company must report those changes or correct the inaccurate information within 30 days of becoming aware of the change or the inaccuracy.

What are the penalties for failure to report?

Failure for a reporting company to satisfy a reporting obligation may result in civil or criminal penalties. The CTA provides for penalties of up to \$500 per day (but not more than \$10,000), imprisonment for not more than 2 years, or both for willfully providing, or attempting to provide, false or fraudulent beneficial ownership information, including a false or fraudulent identifying photograph or document or for willfully failing to report complete or updated beneficial ownership information to FinCEN.

The CTA is clear regarding who may be held liable for willful violations with respect to compliance. The final rule states that a person is considered to have failed to report complete or updated beneficial ownership information if the person causes the failure or is a senior officer of the entity at the time of the failure. The term "senior officer" means any individual holding the position or exercising the authority of a president, chief financial officer, general counsel, chief executive officer, chief operating officer, or any other officer, regardless of official title, who performs a similar function.

Who will have access to reported beneficial ownership information?

FinCEN will disclose beneficial ownership information to five categories of recipients:

- Federal, state, local, and tribal government agencies;
- Foreign law enforcement agencies, judges, prosecutors, central authorities, and competent authorities, provided their requests come through an intermediary federal agency and meet additional criteria;
- Financial institutions using beneficial ownership information to facilitate compliance with customer due diligence requirements;
- Federal functional regulators and other appropriate regulatory agencies acting in a supervisory capacity assessing financial institutions; and
- S. Department of the Treasury.

Even within the five categories, the CTA expressly restricts access to beneficial ownership information to only those authorized users: (i) who are directly engaged in an authorized investigation or activity; (ii) whose duties or responsibilities require access to beneficial ownership information; (iii) who have undergone appropriate training or use staff to access the system who have undergone appropriate training; (iv) who use appropriate identity verification to obtain access to the information; and (v) who are authorized by agreement with the Secretary of the Treasury to access beneficial ownership information.



Recognizing the highly sensitive nature of beneficial ownership information, the CTA requires that beneficial ownership information be maintained "in a secure, nonpublic database, using information security methods and techniques that are appropriate to protect non-classified information security systems at the highest security level." FinCEN has consulted with future stakeholders who would access beneficial ownership information, as well as other government entities that have developed beneficial ownership databases, in its development of the beneficial ownership information database.

To minimize the chances of re-disclosure or unauthorized disclosure of beneficial ownership information, the CTA makes it unlawful for any person to knowingly disclose or knowingly using beneficial ownership information unless that disclosure is authorized under the CTA. These violations are subject to civil and criminal penalties for failure to satisfy a company's obligations.

Additional information and resources

Additional information and resources from FinCEN about the CTA and the Rule are available on the FinCEN website: <https://www.fincen.gov/boi>, including a [Small Entity Compliance Guide](#) and a list of [Frequently Asked Questions](#). Please note that FinCEN updates and modifies information and resources available on its website from time to time, so review its website for the most recently-available guidance.

The materials contained in this document about the CTA and the Rule are current as of December 1, 2023, and are based on FinCEN information and resources available on its website as of that date. These materials should not be construed or relied upon as legal advice or opinion on any specific facts or circumstances. These materials are intended for general educational and informational purposes only, and readers are urged to consult with an attorney licensed to practice in their state concerning their own situations and any specific legal questions they may have.