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Beneficial Ownership Information Reporting Rule Requires Millions of Entities to Report Certain Information to FinCEN Effective January 1, 2024

OVERVIEW

On March 24, 2023, Financial Crimes Enforcement Network (“FinCEN”), a bureau of the U.S. Department of the Treasury, released its guidance materials on its final rule (the “Rule”) establishing beneficial ownership information (“BOI”) requirements, as required by the Corporate Transparency Act (“CTA”). The Rule, which becomes effective January 1, 2024, will require a wide range of entities to begin filing reports regarding their beneficial owners to FinCEN.

WHO TRIGGERS THE FILING REQUIREMENT?

The Rule is applicable to the following U.S. and Non-U.S. entities (collectively, “reporting companies”):

- Any corporation, limited liability company (“LLC”), or any entity created by the filing of a document with a secretary of state or any similar office under the law of a state or Indian tribe.¹
- Any foreign reporting company that is a corporation, LLC, or other entity formed under the law of a foreign country that is 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.

There are 23 types of entities that are exempt from the Rule (collectively, “Exempt Entities”), many of which are already subject to substantial federal and/or state regulation or already must provide their BOI to a governmental authority. Some of these Exempt Entities include:



- large operating companies, which involve any entity that (1) employs more than 20 full time employees in the U.S., (2) has an operating presence at a physical office within the U.S., and (3) filed a U.S. tax return for the previous year reporting more than \$5 million in gross receipts or sales, excluding gross receipts or sales from sources outside the U.S.;
- public companies that have securities registered under Section 12 of the Securities Exchange Act of 1934 (the “Exchange Act”) or are required to make periodic filings under Section 15(d) of the Exchange Act;
- certain financial institutions, including banks, credit unions, depository institution holding companies, bank holding companies, and registered money services businesses;
- investment companies and advisors that are registered with the SEC;
- venture capital fund advisers that have filed Item 10, Schedule A, and Schedule B of Part 1A of Form ADV with the SEC;
- insurance companies and state-licensed insurance producers;
- Commodity Exchange Act-registered companies;
- public accounting firms registered pursuant to the Sarbanes-Oxley Act of 2002;
- certain pooled investment vehicles operated or advised by a bank, a credit union, a broker/dealer, an investment company or investment advisor, or an exempt venture capital fund adviser;
- certain tax-exempt entities, including 501(c) tax exempt entities, political organizations, and charitable trusts; and
- any entity whose ownership interests are controlled or wholly owned, directly or indirectly, by one or more Exempt Entities.

WHAT INFORMATION IS REQUIRED IN THE REPORTS?

The Rule requires the following BOI information to be filed with FinCEN by the reporting company regarding (1) such reporting company; (2) beneficial owners of the entity, each of which is an individual who, directly or indirectly, either (x) exercises substantial control² over a reporting company, or (y) owns or controls at least 25% of the ownership interests of a reporting company; and (3) the company applicant(s)³ of the entity, if the entity will be formed or registered to do business in the U.S. on or after January 1, 2024.

A reporting company must provide the following:

- The full legal name of the reporting company;
- Any trade name or “doing business as” name of the reporting company;
- A complete current address consisting of: (1) in the case of a reporting company with a principal place of business in the U.S., the street address of such principal place of business; and (2) in all other cases, the street address of the primary location in the U.S. where the reporting company conducts business;
- Jurisdiction of formation or registration; and
- Taxpayer Identification Number.



The reporting company must provide the following with respect to each beneficial owner and company applicant:

- The full legal name of the individual;
- The date of birth of the individual;
- A complete current address consisting of: (1) in the case of a company applicant who forms or registers an entity in the course of such company applicant's business, the street address of such business; or (2) in any other case, the individual's residential street address; and
- A unique identifying number from a passport, driver's license, or identification document.

WHEN TO FILE THE REPORTS?

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 on or 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 file an updated report if there is a change in 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.

WHAT ARE THE PENALTIES?

The CTA prohibits any willful violation of to report completed or updated BOI, which can result in civil or criminal penalties, including civil penalties of \$500 per day for each day a violation has not been corrected; and criminal penalties of \$10,000, imprisonment of up to 2 years, or both.

CONCLUSION

The Rule is anticipated to expand the reporting requirements to existing entities to make their initial report to FinCEN by January 1, 2025, which may result in significant time and cost for some entities with complex ownership structure. Entities that may potentially qualify as reporting companies should take steps to understand their reporting requirements ahead of the Rule taking effect on January 1, 2024 and consult with their legal counsel to ensure compliance.



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¹ According to a [factsheet](#) published by FinCEN, it expects that reporting companies will include limited liability partnerships, limited liability limited partnerships, business trusts, and most limited partnerships, in addition to corporations and LLCs, because such entities are generally created by a filing with a secretary of state or similar office.

² The Rule articulates a set of activities that could constitute substantial control of a reporting company. An individual has "substantial control" if the individual:

- serves as a senior officer of the reporting company;
- has authority over the appointment or removal of any senior officer or a majority of the board of directors (or similar body);
- directs, determines, or has substantial influence over important decisions made by the reporting company (e.g. decisions regarding the sale, lease, mortgage, or other transfer of any principal assets; the reorganization, dissolution, or merger of the reporting company, major expenditures or investments, issuances of any equity, incurrence of any significant debt, or approval of the operating budget of the reporting company, etc.); or
- has any other form of substantial control over the reporting company.

³ The company applicant applies to the following individuals:

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

A reporting company that exists or is registered before January 1, 2024 does not need to identify and report on its company applicants.