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Final regulations: Beneficial ownership information reporting

The Financial Crimes Enforcement Network (FinCEN) of the U.S. Treasury Department today released for publication in the Federal Register final regulations requiring certain entities to file with FinCEN reports that identify two categories of individuals:

- The beneficial owners of the entity
- Individuals who have filed an application with specified governmental authorities to create the entity or register it to do business

The [final regulations](#) [PDF 1.01 MB] (330 pages) are intended to implement provisions of the “Corporate Transparency Act” (a division of the “National Defense Authorization Act for Fiscal Year 2021” as enacted following Congress’ veto-override in early January 2021).

Today’s final regulations describe:

- Who must file a report
- What information must be provided
- When a report is due

The requirements are intended to help prevent and combat money laundering, terrorist financing, corruption, tax fraud, and other illicit activity, while minimizing the burden on entities doing business in the United States.

According to a [FinCEN fact sheet](#), the following are the key elements of the beneficial ownership information reporting rule:

Reporting companies

- The rule identifies two types of **reporting companies**: domestic and foreign.
 - A domestic reporting company is a 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.

- A foreign reporting company 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. Under the rule, and in keeping with the Corporate Transparency Act, 23 types of entities are exempt from the definition of “reporting company.”
- FinCEN expects that these definitions mean that reporting companies will include (subject to the applicability of specific exemptions) 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.
- Other types of legal entities, including certain trusts, are excluded from the definitions 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.

Beneficial owners

- Under the final rule, a **beneficial owner** includes any individual who, directly or indirectly, either (1) exercises substantial control over a reporting company, or (2) owns or controls at least 25% of the ownership interests of a reporting company. The rule defines the terms “substantial control” and “ownership interest.” In keeping with the Corporate Transparency Act, the final rule exempts five types of individuals from the definition of “beneficial owner.”
- In defining the contours of who has “**substantial control**,” the final rule sets forth a range of activities that could constitute substantial control of a reporting company. This list captures anyone who is able to make important decisions on behalf of the entity. According to the FinCEN fact sheet release, this approach is designed to close loopholes that allow corporate structuring that obscures owners or decision-makers—a crucial step to unmasking shell companies.
- The final rule provides standards and mechanisms for determining whether an individual owns or controls 25% of the **ownership interests** of a reporting company. Among other things, these standards and mechanisms address how a reporting company should handle a situation in which ownership interests are held in trust.

Company applicants

- The final rule defines a **company applicant** to be only two persons:
 - 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 United States.
 - The individual who is primarily responsible for directing or controlling the filing of the relevant document by another.
- The final rule, however, does not require reporting companies existing or registered at the time of the effective date of the rule to identify and report on their company applicants. In addition, reporting companies formed or registered after the effective date of the rule also do not need to update company applicant information.

Beneficial ownership information reports

- When filing **beneficial ownership information reports** with FinCEN, the final rule requires a reporting company to identify itself and report four pieces of information about each of its beneficial owners: name, birthdate, address, and a unique identifying number and issuing jurisdiction from an acceptable identification document (and the image of such document). Additionally, the final rule requires that reporting companies created after January 1, 2024, 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 beneficial ownership information report in lieu of the required information about the individual.

Timing

- The effective date for the final rule is January 1, 2024.
- 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.

Next steps

- The beneficial ownership information reporting rule is one of three rulemakings planned to implement the Corporate Transparency Act. FinCEN will engage in additional rulemakings to (1) establish rules for who may access beneficial ownership information, for what purposes, and what safeguards will be required to ensure that the information is secured and protected; and (2) revise FinCEN's customer due diligence rule following the promulgation of the beneficial ownership information reporting final rule.
- In addition, FinCEN continues to develop the infrastructure to administer these requirements in accordance with the strict security and confidentiality requirements of the Corporate Transparency Act, including the information technology system that will be used to store beneficial ownership information: the Beneficial Ownership Secure System (BOSS).
- Consistent with its obligations under the Paperwork Reduction Act, FinCEN will publish in the Federal Register for public comment the reporting forms that persons will use to comply with their obligations under the beneficial ownership information reporting rule. FinCEN will publish these forms well in advance of the effective date of the beneficial ownership information reporting rule.
- FinCEN will develop compliance and guidance documents to assist reporting companies in complying with this rule. Some of these materials will be aimed directly at, and made available to, reporting companies themselves. FinCEN will issue a Small Entity Compliance Guide, pursuant to section 212 of the "Small Business Regulatory Enforcement Fairness Act of 1996," in order to inform small entities about their responsibilities under the rule. Other materials will be aimed at a wide range of stakeholders that are likely to receive questions about the rule, such as secretaries of state and similar offices. FinCEN also intends to conduct extensive outreach to all stakeholders, including industry associations as well as secretaries of state and similar offices to ensure the effective implementation of the rule.

Read a related [FinCEN news release](#)

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