

## Insights

# NEW FEDERAL ANTI-CRIME RULE REQUIRES MILLIONS OF BUSINESSES TO REPORT TRUE OWNERSHIP

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With limited amendments to its proposed rule, the Financial Crimes Enforcement Network (“FinCEN”), a division of the U.S. Department of the Treasury, recently promulgated its final rule (the “Reporting Rule”)<sup>[1]</sup> implementing the federal Corporate Transparency Act (“CTA”)<sup>[2]</sup>. When the Reporting Rule takes effect on January 1, 2024, the CTA will require about 39 million<sup>[3]</sup> businesses in the U.S. to enter information about their corporate ownership and control into a FinCEN database, known as the Beneficial Ownership Secure System (“BOSS”), which FinCEN is still building.

<sup>[4]</sup> Additionally, the CTA will require tens of millions of other businesses in the U.S., both foreign and domestic, to assess whether they qualify for an exemption to the CTA. Congress’ stated goal in passing the CTA was to assist law enforcement and national security agencies, which presently lack a rapid, comprehensive method of determining who controls certain legal entities that limit their owners’ personal liability, such as corporations, limited liability companies (“LLCs”) and some trusts.<sup>[5]</sup> According to FinCEN, terrorists and illegal traffickers hide behind these anonymous corporate structures, commonly known as “shell companies,” as they participate in the American financial system. FinCEN’s mandate, in enforcing the CTA, is to create a database that is “highly useful to national intelligence and law enforcement agencies and Federal functional regulators.”<sup>[6]</sup>

To encourage compliance, and to discourage mishandling of sensitive personal data, the CTA has teeth; willfully failing to report or willfully providing false information carries mandatory civil penalties of \$500/day while a violation continues, plus a civil fine of up to \$10,000 and up to 2 years in prison.<sup>[7]</sup> “Unauthorized disclosure or use” of beneficial ownership data (a concept that will be defined in future rulemaking) carries a possible criminal fine of up to \$250,000 or 5 years in prison or both, or up to \$500,000 and 10 years in prison, if the conduct occurred as part of other financial wrongdoing.<sup>[8]</sup> It appears that FinCEN and the Internal Revenue Service (“IRS”) will work cooperatively to enforce civil and criminal violations of the CTA.

The CTA is already law, and FinCEN’s Reporting Rule is final. Initial reports are due in just over a year. FinCEN plans two more waves of related rulemaking before the reporting database goes live on January 1, 2024. The first will repeal and amend portions of FinCEN’s existing Customer Due

Diligence Rule (“CDD Rule”) which require financial institutions to collect beneficial ownership information when opening accounts for customers. In 2019 FinCEN’s then-director characterized the lack of a U.S. requirement to collect information about who owns and controls a business and its assets at the company’s formation as a “dangerous and widening gap” in the country’s national security framework.<sup>[9]</sup>The second will deal with who may access FinCEN’s BOSS database and how they must handle the beneficial ownership data they receive.

In this article, following up on our in-depth article in [February 2022](#) on the proposed Reporting Rule, we will analyze the key features of the final rule, including:

- What kind of entities must report;
- Whose data they must report (at a glance, reporting companies must report data about their owners, and about non-owners, known as “applicants,” who submit their formation documents);
- What data the reporting company must provide about those individuals;
- What triggers a duty to update that data (depending on the size of the entity, updates may need to happen several times a year); and
- What penalties exist for non-compliance or mishandling of reporting data.

We will also analyze several interesting changes that FinCEN made, or refused to make, in response to public comments on the draft Reporting Rule.

## ANALYSIS OF THE FINAL RULE

### **A. “Reporting companies” must report certain information about themselves to FinCEN.**

**Defining a “reporting company”:** A “reporting company” is a legal entity that is formed through a filing in a state secretary of state’s office (or the local equivalent).<sup>[10]</sup>Reporting companies include but are not limited to corporations, LLCs, most partnerships and certain trusts.<sup>[11]</sup>Both domestic and foreign entities can be “reporting companies.”

**Exemptions from the definition:** Twenty-three heavily-regulated industries and business types are exempt from being reporting companies. Exempt are: securities issuers, domestic governmental authorities, banks, domestic credit unions, depository institution holding companies, money services businesses<sup>[12]</sup>, securities brokers or dealers, securities exchange or clearing agencies, other entities registered under the Securities Exchange Act of 1934, registered investment companies and advisers, venture capital fund advisers, insurance companies, state licensed insurance producers, entities registered under the Commodity Exchange Act, accounting firms registered under the

Sarbanes-Oxley Act, public utilities, financial market utilities, pooled investment vehicles, tax exempt entities under sections 501(c), 527(e)(1) (political organizations) and 4947(a) (certain trusts) of the Internal Revenue Code, entities operating exclusively to provide financial assistance to tax-exempt entities, “large operating companies,” subsidiaries of certain exempt entities, and “inactive businesses.”<sup>[13]</sup> Congress gave FinCEN authority to add more exemptions, but FinCEN declined to do so in the final rule.

Two of the most sought-after exemptions to the Reporting Rule will be for “large operating companies” and “inactive entities.” A “large operating company” must have (a) more than 20 full time employees in the U.S., (b) an operating presence at a physical office within the U.S., and (c) more than \$5 million in gross receipts or sales on the previous year’s U.S. tax return.<sup>[14]</sup> To qualify as an “inactive entity,” an entity must have been in existence on or before January 1, 2020, not be engaged in active business, not be owned in any manner by a foreign person, not have had a change in ownership within the last twelve months, not have sent or received any amount greater than \$1,000 within the last 12 months, and have no assets or ownership interests in any entity in the U.S. or abroad.<sup>[15]</sup> In other words, it will not be easy to qualify as an “inactive entity,” and there is careful, annual analysis that must take place in order to claim an exemption as a “large operating company.”

**Information that a reporting company must report and certify:** About itself, a reporting company must report to FinCEN: (a) its full legal name, (b) all trade names and “doing business as” names, (c) its principal place of business (if domestic) or the primary location in the U.S. where it conducts business (if foreign), (d) the state or tribal jurisdiction where it was formed (if domestic) or where it was first registered to do business in the U.S. (if foreign) and (e) its IRS taxpayer identification number (“TIN”) if one has been issued, or if not, then the foreign equivalent with the name of the issuing foreign jurisdiction.<sup>[16]</sup> There are a handful of special rules for reporting companies which are owned by exempt entities (which must only report their corporate names), minor children (the parent/guardian’s information must be provided in place of the child’s, noting that the true owner is a child), and foreign pooled investment vehicles (which must report information for only one beneficial owner).<sup>[17]</sup>

The reporting company must certify that all submitted information about itself and about its “applicants” and “beneficial owners” (both terms defined below) is “true, correct and complete.”<sup>[18]</sup>

## **B. New reporting companies must provide data about the “applicants” who create them.**

A reporting company will have at least one and possibly as many as two “applicants.”<sup>[19]</sup> A reporting company’s applicants are (i) the individual who directly filed a document with the secretary of state’s office to create the entity or register it to do business in a state and (ii) the individual

primarily responsible for directing the filing.<sup>[20]</sup> It is possible, especially for entities created without the assistance of a business formation service or law firm, that both applicant roles may have been played by a single person. On the other hand, FinCEN says that for a reporting company that, for example, relied on a law firm for its creation, its “applicants” would likely be (i) the paralegal or assistant who made the filing and (ii) the attorney who directed the filing.<sup>[21]</sup>

Only reporting companies created *after* January 1, 2024 need to report information about their applicants.<sup>[22]</sup> Reporting companies created *before* January 1, 2024 do not need to report any data about their applicants at all.<sup>[23]</sup> In addition, reporting companies provide the required information about their applicants, they are not obligated to update it as the applicants’ reported data changes. A single report, accurate when filed, is satisfactory.

**Data to be provided about each applicant:** The reporting company must provide each applicant’s (a) full legal name, (b) date of birth, (c) *business* street address, (d) the unique ID number from the individual’s identification document, (e) the jurisdiction which issued the identification document, and (f) an image of the document showing the individual’s unique ID number.<sup>[24]</sup> Acceptable identification documents are a state- or tribal- issued ID, state driver’s license, U.S. passport or, if none of those are available, then a foreign passport, all of which must be current at the time the ID is submitted to FinCEN.<sup>[25]</sup>

### **C. Reporting companies must report information about their “beneficial owners.”**

A “beneficial owner” is “any individual who, directly or indirectly, either exercises *substantial control* over such reporting company or *owns or controls at least 25% of the ownership interests* of such reporting company.”<sup>[26]</sup> While FinCEN has capped the number of *applicants* that a reporting company may have at two, its number of *beneficial owners* is unlimited. However, FinCEN estimates that reporting companies with a “simple” corporate structure (an estimated 59% of the total) will typically have one beneficial owner, those with “intermediate” complexity will report 4 beneficial owners, and those with “complex” structure will report 8 beneficial owners.<sup>[27]</sup>

**Beneficial ownership through “substantial control”:** A person exerts substantial control by: (i) serving as a “senior officer,” (ii) having authority to appoint or remove any senior officer or a majority of the board of directors or equivalent body, or (iii) having “substantial influence” over important matters at the company, regardless of their title or role.<sup>[28]</sup> FinCEN deliberately has not provided a specific list of which titles constitute a “senior officer,” since such a list would only serve as a guide to evading the rule.<sup>[29]</sup> However, FinCEN notes that the titles of “corporate secretary” and “treasurer” tend to be ministerial, with little actual control.<sup>[30]</sup> The “substantial influence” prong is a catchall, intended to identify individuals who exert informal authority from within or from the outside of an organization.<sup>[31]</sup> FinCEN emphasizes that a person may exert “substantial control” over a reporting company even if he/she lacks total control over the enterprise, similarly to how a person with only a

25% ownership interest is treated as a beneficial owner.<sup>[32]</sup> FinCEN provides two lists of factors for evaluating whether someone has become a “beneficial owner” by exerting substantial control, including, for example, by determining the operating budget of the operating company.<sup>[33]</sup>

**Beneficial ownership through “at least 25% ownership”:** “Ownership interests” may take the form of stock, capital or profit interests, convertible interests, options to buy or sell any of the previously listed interests, or through contracts, relationships or other understandings.<sup>[34]</sup> A beneficial owner may own or control such interests directly or indirectly, jointly with another person or through an agent, custodian, trust, or intermediary entity.<sup>[35]</sup> In all events, the person exerting such control may be a beneficial owner if their interests, in the aggregate, total at least 25% of the total outstanding interests in the reporting company.<sup>[36]</sup> Optional interests must be treated as exercised.<sup>[37]</sup> Where the foregoing calculation leads to an uncertain outcome, the rule provides that reporting companies should use a “vote or value” approach: “any individual who owns or controls 25 percent or more of any class or type of ownership interest shall be deemed to own or control 25 percent or more of the ownership interests of the reporting company.”<sup>[38]</sup>

**Data to be provided about each beneficial owner:** The required information for a beneficial owner is identical to that required for an applicant, except that applicants must provide their *business* address: the reporting company must provide the individual’s (a) full legal name, (b) date of birth, (c) *residential* street address, (d) the unique ID number from the individual’s identification document, (e) the jurisdiction which issued the identification document, and (f) an image of the document showing the individual’s unique ID number.<sup>[39]</sup> Acceptable identification documents are a state- or tribal- issued ID, state driver’s license, U.S. passport or, if none of those are available, then a foreign passport, all of which must be current at the time they are submitted to FinCEN.<sup>[40]</sup>

**Exceptions from the definition of a “beneficial owner”:** FinCEN lists five groups who are presumptively excepted from being treated as a reporting company’s “beneficial owners,” assuming that they do not exert substantial control: (i) minor children, (ii) agents, (iii) employees “acting solely as an employee,” (iv) individuals whose only interest is through a future right of inheritance, and (v) creditors of a reporting company whose only interest is for the payment of a predetermined sum.<sup>[41]</sup> In spite of the exemption, a parent or guardian of a minor child must report their own personal data in place of the child’s data, and must indicate that they are reporting in this capacity.<sup>[42]</sup> Even though senior officers are employees of a reporting company, they are specifically barred from taking advantage of the employee exception.<sup>[43]</sup> Attorneys representing their clients will usually qualify for the “agent” exception, according to FinCEN. The agency reasons that it “does not envision that the performance of ordinary, arms-length advisory or other third-party professional services to a reporting company would provide an individual with the power to direct or determine, or have substantial influence over, important decisions of a reporting company.”<sup>[44]</sup> Nevertheless, FinCEN explicitly refused to create a blanket exemption for legal professionals, as it also declined to

create exemptions for family offices and foreign entities that report their beneficial ownership information to a foreign regulator.<sup>[45]</sup>

#### **D. Instead of providing personal data directly to a reporting company, beneficial owners and applicants may apply to FinCEN for a “FinCEN ID.”**

If a beneficial owner or applicant does not want to provide the personal data listed in part II.B-C of this Alert to a reporting company, the individual has the option of applying directly to FinCEN for a “FinCEN identifier” (“FinCEN ID”). When applying for a FinCEN ID, the individual must provide directly to FinCEN all the same data that he/she would have to submit to the reporting company.

<sup>[46]</sup>Individuals who obtain FinCEN IDs carry the burden of keeping their data updated with FinCEN.

<sup>[47]</sup>If an individual had provided their personal data directly to the reporting company, then the reporting company would bear the burden of keeping the individual’s data current and correct.

Reporting companies also have the option to apply for FinCEN IDs. However, the final rule does not allow reporting companies to use other entities’ FinCEN IDs to satisfy their reporting obligations. (In other words, imagine that Reporting Company A is the beneficial owner of Reporting Company B; B may not provide A’s FinCEN ID to satisfy B’s obligation to report its beneficial ownership.) FinCEN decided that its proposed rule regarding entities’ use of FinCEN IDs was unclear, and plans to finalize that portion of the rule separately.<sup>[48]</sup>

#### **E. Existing reporting companies must make their first report by January 1, 2025 and most updates are due within 30 days of the change.**

**Initial reports:** Reporting companies that already exist as of January 1, 2024 have until January 1, 2025 to make their initial beneficial ownership report.<sup>[49]</sup> Reporting companies formed on or after January 1, 2024 will need to make their initial report within 30 days of the earlier of (a) receiving actual notice of their registration from the secretary of state or (b) notice of their registration becoming publicly available.<sup>[50]</sup>

**Updated reports:** Reporting companies are obligated to make a report within 30 days of a change to any data that FinCEN requires to be reported. (See sections A-C of this Alert above for details of what information reporting companies must provide about themselves, their applicants and their beneficial owners.) Likewise, if a reporting company gains or loses its reporting exemption, it must report within 30 days of the change.<sup>[51]</sup> Corrections to errors must be filed within 30 days of when the reporting company “becomes aware or has reason to know of the inaccuracy.”<sup>[52]</sup> Making the correction within 90 days of the filing of an accurate report qualifies the reporter for a safe harbor from criminal or civil prosecution for violating the CTA, assuming that the original incorrect report was not made for the purpose of evasion.<sup>[53]</sup>

There is no mechanism in the final rule to request an extension of time to report, although FinCEN says it will reconsider this issue if needed.<sup>[54]</sup>

**Changes that *do not* require an update:** Reporting companies must submit information to FinCEN, including an updated image of a beneficial owner's identity document, only when the reportable information on the face of the document changes.<sup>[55]</sup> In other words, if a beneficial owner changes their *name* due to marriage or divorce, or moves to a new *residential address*, then the reporting company must update that data *and* submit an updated image of the beneficial owner's new driver's license showing the updated information within 30 days of the name and address change. However, if the beneficial owner renews his/her driver's license, updates the photo, and gets a new expiration date, there is no need for the reporting company to update the beneficial ownership registry, because FinCEN does not require the expiration date or the photo to be kept current.<sup>[56]</sup>

**Reporting when a beneficial owner dies or attains majority:** When a beneficial owner dies, the reporting company must report the change in its beneficial ownership within 30 days of the settlement of the decedent's estate.<sup>[57]</sup> When a minor child reaches majority under the law of the jurisdiction where the reporting company was formed, an updated report must be made within 30 days of the child reaching majority.<sup>[58]</sup>

## **F. FinCEN has set harsh penalties, including individual liability for beneficial owners, for willfully missing or inaccurate reports.**

FinCEN made only one addition to the penalty provisions that Congress provided for in the statute,<sup>[59]</sup> specifying that "senior officers" of a reporting company bear *individual liability* for reporting violations, alongside the individual who actually causes such violations.<sup>[60]</sup>

FinCEN can be expected to undertake its enforcement obligations with zeal, driven by the Congressional requirement that FinCEN "ensure the beneficial ownership information reported to FinCEN is accurate, complete, and highly useful."<sup>[61]</sup> The statute specifies two types of violations: (i) reporting violations and (ii) unauthorized disclosure or use of beneficial ownership data.

**Reporting violations:** The CTA provides that willfully reporting or attempting to report false or fraudulent beneficial ownership, or willfully failing to make updates to the data, "shall" be punished with a civil penalty of up to \$500/day while the violation continues, with a possible criminal fine of up to \$10,000 and up to two years in prison.<sup>[62]</sup> The CTA says, "In this subsection, the term 'willfully' means the voluntary, intentional violation of a known legal duty."<sup>[63]</sup> The Reporting Rule does not expand on that definition. The CTA's definition of "willful" would seem to require deliberate evasion of the reporting requirements to constitute a violation. However, as noted above, where a reporting company's reporting violations are found to be willful, the Reporting Rule provides that the

responsible parties include “such person [that] either causes the failure, or is a senior officer of the entity at the time of the failure.”<sup>[64]</sup>

**Unauthorized disclosure or use:** CTA provides that it is unlawful to “knowingly disclose or knowingly use the beneficial ownership information obtained by the person” for an unauthorized purpose.

<sup>[65]</sup>The same standard applies whether the mishandled data is the reporting company’s own data, or the recipient has obtained outside data, for example, in response to a court order, or as part of a financial institution’s request for the data under the CDD Rule. Neither the statute nor the Reporting Rule defines what it means to “knowingly” disclose or use data. It is likely that FinCEN will provide further information about disclosure violations in future rulemaking. (See section G of this Alert for more information about FinCEN’s upcoming rulemaking, including its plans to revise the CDD Rule to harmonize with the CTA.)

The statute provides even harsher penalties for disclosure violations than reporting violations. Disclosure violations are punishable with a mandatory civil penalty of \$500/day while the violation continues, plus a possible criminal fine of up to \$250,000, 5 years in prison, or both.<sup>[66]</sup>

**Who will enforce the CTA?:** It appears that FinCEN itself intends to enforce *civil* violations of the CTA. The Department of the Treasury’s regulations delegate to FinCEN the authority to determine whether most non-financial entities have complied with Treasury’s rules, including the rules implementing the CTA.<sup>[67]</sup> However, the Department of the Treasury delegated to the IRS the authority to investigate *criminal* violations in this area.<sup>[68]</sup> As noted above, there are both criminal and civil penalties for violating the CTA. As a result, it appears that FinCEN and the IRS could be working cooperatively to enforce the CTA.

## **G. FinCEN has completed only the first of at least three rounds of rulemaking implementing the CTA.**

The finalized Reporting Rule represents the first of three major rulemakings that FinCEN will make to implement the CTA. The second round of rulemaking will repeal and amend portions of the CDD Rule from 2016,<sup>[69]</sup> which requires certain financial institutions to collect (but not to report) beneficial ownership information from their customers before customers may open a new account. By law, FinCEN is required to promulgate this rule by January 1, 2025 (within one year of the effective date of the Reporting Rule).<sup>[70]</sup> The third round will describe who may access FinCEN’s BOSS database and how they must handle the beneficial ownership data they receive (the “Access Rule”).<sup>[71]</sup>

FinCEN also plans to issue guidance and FAQs as necessary to address certain outstanding issues, such as state-specific reporting issues not addressed by the final Reporting Rule and protection of beneficial ownership data of persons who are in witness protection or have been the victim of a crime.<sup>[72]</sup>



## OBSERVATIONS REGARDING THE SCOPE OF THE FINAL REPORTING RULE

Between the proposed and final versions of the Reporting Rule, FinCEN made only modest changes. We outline our major takeaways from the final Reporting Rule here.

### **A. FinCEN has no interest in harmonizing with the existing CDD Rule.**

In light of the forthcoming revisions to the CDD Rule, FinCEN rejected all comments requesting that FinCEN harmonize the Reporting Rule with the more relaxed requirements of the existing CDD Rule.<sup>[73]</sup> FinCEN reasons that the CTA sets more demanding requirements for determining beneficial ownership than the CDD Rule does, and FinCEN rejected any suggestion that it deviate from Congress' explicit intentions.<sup>[74]</sup>

FinCEN is, however, considering whether to allow beneficial ownership data in the BOSS database to satisfy financial institutions' customer due diligence or other reporting requirements.<sup>[75]</sup>

### **B. FinCEN viewed many of the public comments as premature.**

While apparently trying to receive all public comments with grace, FinCEN implied that many of the comments were premature. FinCEN noted that there are two more waves of rulemaking to implement the CTA which have not even begun (namely, the Access Rule and the revision of the CDD Rule). FinCEN said that many commenters' questions would be answered once future rules are published.<sup>[76]</sup>

### **C. FinCEN heeded commenters' pleas for simplicity in some ways.**

The final Reporting Rule reflects that FinCEN listened to public comments that requested that the rule's reporting architecture be made simpler and that reporting companies have fewer data points to keep updated. Some key examples of ways in which the final rule is less complex than the proposed version:

- FinCEN originally proposed that all reporting companies, even those formed decades ago, would have to report the same amount of data for the applicants who filed their formation documents as for their current beneficial owners. This would have sent older reporting companies running for their archives to determine who filed their incorporation documents. FinCEN is only requiring applicant information for entities formed after January 1, 2024, and is capping at two the number of applicants, even for complex entities.
- All timelines for submitting updated or corrected data have been harmonized at 30 days. FinCEN's original proposal would have required submission of some data within 14 days of a triggering event and other data within 30 days of the trigger.

- Reporting companies do not need to upload new driver's license images, merely because the license expired and was renewed, or because the beneficial owner had a new license photo taken.<sup>[77]</sup>
- Reporting companies which have previously entered data into the BOSS database are not obligated to file an update if they terminate or dissolve.<sup>[78]</sup>
- FinCEN scrapped its plan to collect beneficial owners' Social Security Numbers ("SSNs") on an optional basis, with the beneficial owners' permission. The final rule provides that beneficial owners' SSNs are not to be submitted. This change to the rule relieves reporting companies from the burdens of seeking permission to use each beneficial owner's SSN and of potentially mis-entering this data into the BOSS database.

#### **D. FinCEN is unwilling, or perhaps unable, to allow more flexibility in certain requirements.**

FinCEN frequently cited Congress' desire that the beneficial ownership database be "highly useful to national intelligence and law enforcement agencies and Federal functional regulators"<sup>[79]</sup> to explain its refusal to soften various reporting requirements:

- FinCEN declined to adopt a good faith standard regarding reporting companies' obligations to make corrections or updates, noting that the CTA had placed the reporting responsibility clearly on the shoulders of the reporting companies.<sup>[80]</sup>
- FinCEN declined to create a new exemption for law firms. FinCEN reasoned that legal professionals would typically qualify for the "agent" or "employee" exceptions to the definition of a "beneficial owner"<sup>[81]</sup> (see section C of our analysis above for details about these exceptions) and so would not be treated as their clients' beneficial owners in any event. In addition, FinCEN noted that Congress made it extremely difficult to add any additional exemptions to the twenty-three exemptions found in the CTA itself. Adding additional exemptions requires the approval of the Secretary of the Treasury, the Attorney General and the Secretary of Homeland Security.<sup>[82]</sup>
- FinCEN declined to substitute a "reasonableness" standard for violations of the CTA.<sup>[83]</sup> FinCEN reasoned that the severe punishments which the CTA prescribes for violations (see section F above for details) require imposition of personal liability on a reporting company's senior officers.<sup>[84]</sup>

## CONCLUSION

The CTA represents Congress' first major overhaul to U.S. anti-money laundering ("AML") law in a generation. One of the goals of the CTA to bring the U.S. into line with AML programs in other major world economies. Another, possibly more urgent goal is to create a national database of individuals who own, run or founded certain types of legal entities that shield their owners from personal liability and give them anonymity in their business dealings. This beneficial ownership database will allow law enforcement and intelligence authorities to have rapid access to information they need to combat money laundering, tax and sanctions evasion, and various forms of trafficking in drugs, arms and human beings. The CTA's language is specific; FinCEN had relatively little latitude in promulgating its rules implementing the Act, except for setting certain reporting timelines. As a result, public commenters were likely disappointed when they requested that FinCEN soften the requirements of various portions of a draft rule implementing the CTA.

The final Reporting Rule, set to take effect on January 1, 2024, will require existing entities to make their initial report to FinCEN by January 1, 2025. Reporting companies (entities created with a filing in any state's secretary of state's office) will have to provide about half a dozen pieces of easily accessible pieces of biographical data about each of their beneficial owners. Their beneficial owners are individuals who have substantial control over the entity or who own or control at least 25% of it. Reporting companies created after the rule takes effect are also obligated to provide information about the "applicants" who filed their incorporation papers. The chief burden of compliance with this rule will fall on relatively small businesses, including single-member LLCs and closely held corporations. Registering once does not end a reporting company's obligations; reporting companies are generally obligated to keep their beneficial ownership data updated within 30 days of any change. The professional community should prepare itself for an onslaught of questions about the CTA as the compliance deadline approaches.

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[1] The final Reporting Rule is found at 31 CFR § 1010.380.

[2] The CTA added a new section (31 USC § 5336) to the existing Bank Secrecy Act. Congress passed the CTA as part of the Anti-Money Laundering Act of 2020 in the National Defense Authorization Act for FY 2021.

[3] [FinCEN's Supplementary Information to the final Reporting Rule](#) p. 59581. FinCEN estimates that 32.6 million entities will make their initial report and 6.6 million entities will make updated reports in the first year the CTA is in effect.

[4] [FinCEN's Supplementary Information to the final Reporting Rule](#) p. 59508-09.

[5] [FinCEN's Supplementary Information to the final Reporting Rule](#) p. 59502, 59504 (noting that law enforcement currently secures such information through grand jury subpoenas, surveillance, and search warrants, all of which are time-consuming to prepare and execute).

[6] 31 USC § 5336(b)(1)(F)(iv); [FinCEN's Supplementary Information to final Reporting Rule](#) p. 59550.

[7] 31 USC § 5336(h)(1), (h)(3)(A).

- [8] 31 USC § 5336(h)(2), (h)(3)(B).
- [9] FinCEN's Supplementary Information to the final Reporting Rule p. 59502.
- [10] 31 CFR § 1010.380(c)(1)(i)-(ii).
- [11] 31 CFR § 1010.380(c)(1)(i)-(ii).
- [12] In the final rule, FinCEN deliberately used the term "money services business," referring to all such entities registered under 31 CFR § 1022.380, even though the statute had used the narrower term "money transmitting business." FinCEN clarified that the exemption properly applies to all "money services businesses." FinCEN's Supplementary Information to the final Reporting Rule p. 59540, fn. 195.
- [13] 31 CFR § 1010.380(c)(2)(i)-(xxiii).
- [14] 31 CFR § 1010.380(c)(2)(xxi).
- [15] 31 CFR § 1010.380(c)(2)(xxiii).
- [16] 31 CFR § 1010.380(b)(1)(i).
- [17] 31 CFR § 1010.380(b)(2).
- [18] 31 CFR § 1010.380(b).
- [19] 31 CFR § 1010.380(e).
- [20] 31 CFR § 1010.380(e)(1)-(3).
- [21] FinCEN's Supplementary Information to the final Reporting Rule 59536.
- [22] 31 CFR § 1010.380(b)(2)(iv).
- [23] Id.
- [24] 31 CFR § 1010.380(b)(1)(ii), especially (b)(1)(ii)(C)(1).
- [25] 31 CFR § 1010.380(b)(2)(ii)(D).
- [26] 31 USC § 5336(a)(3)(A); 31 CFR § 1010.380(d) (emphasis added).
- [27] FinCEN's Supplementary Information to the final Reporting Rule p. 59574-75.
- [28] 31 CFR § 1010.380(d)(1)(A)-(C).
- [29] C.f. FinCEN's Supplementary Information to the final Reporting Rule p. 59504, 59527, 59535, 59540, 59543 (describing various alternatives that FinCEN considered but rejected because it would assist bad actors in evading the rule).
- [30] FinCEN's Supplementary Information to the final Reporting Rule p. 59526.
- [31] FinCEN's Supplementary Information to the final Reporting Rule p. 59527.
- [32] Id.
- [33] 31 CFR § 1010.380(d)(1)(i)(C)(1)-(7), (d)(1)(ii)(A)-(F).
- [34] 31 CFR § 1010.380(d)(2)(i)(A)-(E).
- [35] 31 CFR § 1010.380(d)(2)(ii)(A)-(D).
- [36] 31 CFR § 1010.380(d)(2)(iii).
- [37] 31 CFR § 1010.380(d)(2)(iii)(A)-(C).
- [38] 31 CFR § 1010.380(d)(2)(iii)(D); FinCEN's Supplementary Information to the final Reporting Rule p. 59532.
- [39] 31 CFR § 1010.380(b)(1)(ii).
- [40] 31 CFR § 1010.380(b)(2)(ii)(D).

[41] 31 CFR § 1010.380(d)(3).

[42] 31 CFR § 1010.380(b)(2)(ii).

[43] 31 CFR § 1010.380(d)(3)(iii); FinCEN's Supplementary Information to the final Reporting Rule p. 59534.

[44] FinCEN's Supplementary Information to the final Reporting Rule p. 59534.

[45] FinCEN's Supplementary Information to the final Reporting Rule p. 59540.

[46] 31 CFR § 1010.380(b)(4).

[47] 31 CFR § 1010.380(b)(4)(iii).

[48] FinCEN's Supplementary Information to the final Reporting Rule p. 59525.

[49] 31 CFR § 1010.380.(a)(1)(iii).

[50] 31 CFR § 1010.380(a)(1)(i)-(ii).

[51] 31 CFR § 1010.380(b)(3)(ii); FinCEN's Supplementary Information to the final Reporting Rule p. 59573 (loss of an exemption would require registration within 30 days).

[52] 31 CFR § 1010.380(a)(3).

[53] 31 USC § 5336(h)(3)(C)(i)(I)(bb).

[54] FinCEN's Supplementary Information to the final Reporting Rule p. 59511.

[55] 31 CFR § 1010.380(a)(2)(i).

[56] 31 CFR § 1010.380(a)(2)(v); FinCEN's Supplementary Information to the final Reporting Rule p. 59513.

[57] 31 CFR § 1010.380(a)(2)(iii).

[58] 31 CFR § 1010.380(a)(2)(iv); FinCEN's Supplementary Information to the final Reporting Rule p. 59533-34.

[59] 31 USC § 5336(h).

[60] 31 CFR § 1010.380(g)(1)-(4)(iii); FinCEN's Supplementary Information to the final Reporting Rule p. 59546.

[61] 31 USC § 5336(b)(4)(B)(ii).

[62] 31 USC § 5336(h)(1)(A)-(B), (h)(3)(a)(i)-(ii).

[63] 31 USC § 5336(h)(6).

[64] 31 CFR § 1010.380(g)(4)(iii).

[65] 31 USC § 5336(h)(2).

[66] 31 USC § 5336(h)(3)(b)(i)-(ii).

[67] 31 CFR § 1010.810(a) (general authority), (d) (authority to impose civil penalties).

[68] 31 CFR § 1010.810(c)(2).

[69] The 2016 CDD Rule is at 31 CFR § 1010.230.

[70] 31 USC § 5336(b)(6).

[71] FinCEN's Supplementary Information to the final Reporting Rule p. 59548.

[72] FinCEN's Supplementary Information to the final Reporting Rule p. 59511, 59518.

[73] For example, the CDD Rule requires financial institutions to collect the name of only one individual with substantial control, a maximum of five beneficial owners, and examines only equity interests when determining ownership percentages. FinCEN's Supplementary Information to the

final Reporting Rule p. 59528-29, 59561.

[74] FinCEN's Supplementary Information to the final Reporting Rule p. 59533.

[75] FinCEN's Supplementary Information to the final Reporting Rule p. 59557.

[76] FinCEN's Supplementary Information to the final Reporting Rule p. 59520, 59549.

[77] 31 CFR § 1010.380(a)(2)(v); FinCEN's Supplementary Information to the final Reporting Rule p. 59513.

[78] FinCEN's Supplementary Information to the final Reporting Rule p. 59514.

[79] 31 USC § 5336(b)(1)(F)(iv); FinCEN's Supplementary Information to the final Reporting Rule p. 59500, 59509-16, 59519-20, 59525, 59528 fn. 153, 59536, 59539-40, 59550, 59558, 59560, 59582, 59584, 59587 (all invoking Congress's requirement that the beneficial ownership database be "highly useful").

[80] FinCEN's Supplementary Information to the final Reporting Rule p. 59513.

[81] FinCEN's Supplementary Information to the final Reporting Rule p. 59527.

[82] FinCEN's Supplementary Information to the final Reporting Rule p. 59540.

[83] FinCEN's Supplementary Information to the final Reporting Rule p. 59546.

[84] Id.

## **RELATED PRACTICE AREAS**

- Anti-Money Laundering Compliance
- Corporate
- Finance
- Fintech
- Financial Regulation Compliance & Investigations
- Regulation, Compliance & Advisory

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