



Final Rule Announced for New Owner Disclosure Requirements

The Financial Crimes Enforcement Network (FinCEN) of the U.S. Treasury Department has issued a final rule for the beneficial ownership information reporting requirements, containing changes and comments to a proposed rule regarding the requirements that was introduced back in December of 2021.

As discussed in a [previously](#), FinCEN's "beneficial owners" reporting requirements are aimed at reducing money laundering and tax evasion through the use of small shell companies by requiring owners meeting certain criteria to report their interest in such companies to FinCEN. The Final Rule is scheduled to go into effect on **January 1, 2024**. The requirements of the Final Rule are detailed below.

Reporting Companies

The provisions in the Proposed Rule regarding "reporting companies" largely remained unchanged. The two types of reporting companies identified in the Final Rule are domestic reporting companies and foreign reporting companies. Domestic reporting companies are entities created by filing documents with the secretary of state or similar office while foreign reporting companies are entities formed in a foreign country that are registered to do business in a state by filing documents with the secretary of state or similar office.

The Final Rule contains 23 exemptions to the definition of "reporting companies." The exemptions include various financial institutions, insurance companies, tax-exempt entities, and companies with over 20 employees and at least \$5 million in gross sales or receipts, as reflected in the previous year's federal tax returns. Additionally, FinCEN clarified in the Final Rule that most trusts are not subject to reporting requirements unless they are created through filings with the secretary of state or a similar office.

Beneficial Owners

The Final Rule defines a "beneficial owner" as being "any individual who, directly or indirectly, either exercises substantial control over such reporting company or owns or controls at least 25 percent of the ownership interest of such reporting company." In response to comments regarding ambiguities in the Proposed Rule's language defining the "substantial control" element of a "beneficial owner," FinCEN provided clarification via a new paragraph entitled "Definition of Substantial Control."

Here, FinCEN lists a range of activities that would constitute "substantial control" of a reporting company, including the following:

- (1) service as a senior officer,
- (2) authority over the appointment or removal of officers or a majority of the board of directors, and
- (3) directing, determining, or having substantial influence over decisions, such as major transactions or termination of the entity.

Despite potential ambiguity in the Final Rule, FinCEN has also included several examples illustrating where the definition of “substantial control” will or will not be met. The Final Rule also contains five exemptions to the definition of “beneficial owner,” including minors, employees, and creditors.

Company Applicants

After concern over the Proposed Rule’s definition of a “company applicant” for purposes of the reporting requirements, the Final Rule retained the provision with a few minor changes. Reporting companies will be required to disclose all “company applicants” – an individual who files the documents to create the entity and the individual who is responsible for directing or controlling the filing of these documents. However, the Final Rule exempts entities existing at the time of the effective date of the Final Rule from disclosing company applicants. In addition, reporting companies formed or registered after the effective date of the Final Rule need not update company applicant information.

Content of Beneficial Ownership Information Reports (BOI Reports)

Reporting companies will be required to report the name, birthdate, address, and identification document containing a unique identification number for all beneficial owners and company applicants. The Final Rule contains a list of types of identification documents that will be accepted, so long as the report lists the jurisdiction in which the identification document was issued. Further, the Final Rule clarifies that the beneficial owners must use a residential address rather than an address used for tax purposes. However, company applicants need only use a business address if they create or register entities in the course of that business. Individuals whose information is included in the BOI Reports can obtain a unique number from FinCEN to use in future reports instead of having to report the required information listed above.

Timing to File; Noncompliance

The Final Rule modified the timing for filings that was contained in the Proposed Rule so that entities existing prior to the effective date of the Final Rule will have **one year** from the effective date, and entities formed after the effective date of the Final Rule will have **30 days** after receipt of notice of formation from the secretary of state, to file the BOI Reports. Further, entities now have 30 days from the time the inaccuracy is discovered to update information. Any person who willfully provides false information, fails to file a BOI Report, or fails to update information in a report can be fined up to \$500 for each day of the violation, be assessed an additional fine of up to \$10,000, and/or face up to 2 years in prison.

What does this mean?

FinCEN has stated that over the next year, they will begin to develop the Beneficial Ownership Secure System (BOSS), a database where beneficial ownership information will be compiled,

and prescribe rules and procedures to allow various agencies to access information within the database.

Additionally, FinCEN will continue to issue guidance covering various provisions of the Final Rule, to ensure that each reporting company is aware of its obligations when the Final Rule goes into effect in 2024.

A complete overview of the current Final Rule can be found [here](#).

For more information, please contact [Marc Jacobs](#) or [Andrew Kidda](#).