



PILLAR LEGAL

America's New Beneficial Ownership Reporting Regime

U.S. TECH LAW UPDATE¹

April 3, 2023

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I. Background

On January 1, 2021, Congress enacted the Anti-Money Laundering Act of 2020 (the “AMLA”) to combat money laundering and terrorist financing by expanding the regulatory power of the Financial Crimes Enforcement Network (“FinCEN”), a financial intelligence bureau within the U.S. Treasury Department created to support law enforcement. Included within the AMLA is the Corporate Transparency Act (the “CTA”), which requires certain companies, including those with fewer than twenty (20) full-time employees and fewer than US\$5 million in annual gross receipts, to disclose company identifying information and information identifying individuals and entities who ultimately own or control an interest in such companies (also called beneficial ownership information (“BOI”) to FinCEN.² The CTA requires FinCEN to maintain such BOI in a secure, non-public database that, once created, will be made accessible for limited use by national security, intelligence, and law enforcement agencies, U.S. federal regulators, and international partners.³

On September 30, 2022, FinCEN issued a final rule regarding the Beneficial Ownership Information Reporting Requirements (the “Final Rule”) to implement the CTA and clarify the CTA’s BOI reporting requirements (the “Reporting Requirements”), which will become effective for newly formed companies on January 1, 2024, and effective for previously formed companies on January 1, 2025.⁴ This legal update summarizes key details of the Final Rule relevant for compliance, including who must file reports, what information must be reported, how reports must be filed, and when reports must be filed.

II. Who Must File a Report?

There are two types of companies that must file reports of beneficial ownership (“BOI Reports”) under the Reporting Requirements (together, “Reporting Companies”): (i) “Domestic Reporting Companies,” or entities created by the filing of a document with a secretary of state or

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² 31 U.S.C. § 5336.

³ *Id.*

⁴ 31 CFR 1010, Sec. 1010.380; Federal Register, 87 FR 59498.



similar office of a jurisdiction within the United States, and (ii) “Foreign Reporting Companies,” or entities created under the law of a foreign jurisdiction that are registered to do business within the United States.⁵ Based on the exemptions contemplated below, Domestic Reporting Companies and Foreign Reporting Companies comprise small businesses that have less than twenty (20) full employees and less than US\$5 million in annual gross receipts, and which aren’t already subject to substantial federal or state regulation.

Although Reporting Companies are expansively defined, the CTA explicitly exempts twenty-three (23) types of entities from the Reporting Requirements and thus such entities need not file BOI Reports. These filing-exempt entities include, but are not limited to:

- i. “Certain Heavily Regulated Entities,” which are entities already subject to substantial federal or state regulation, and thus already disclose BOI.⁶ For example, U.S. governmental authorities, issuers that are required to file periodic reports with the Securities and Exchange Commission (the “SEC”), SEC-registered broker/dealers, banks, U.S. credit unions, bank holding companies, money services businesses, tax exempt entities, entities operating exclusively to assist tax exempt entities, insurance companies, state-licensed insurance producers, public utilities, among others.⁷
- ii. “Large Operating Companies,” or companies that (i) employ more than 20 full-time employees in the U.S., (ii) have an operating presence at a physical location within the U.S., and (iii) filed a federal income tax or information return in the U.S. for the previous year demonstrating more than US\$5 million in gross receipts or sales.⁸
- iii. “Inactive Entities,” or entities in existence for over one year and that (1) are not engaged in active business, (ii) are not owned, indirectly or directly, by a foreign person, (iii) have not, in the preceding 12-month period, experienced a change in ownership or sent or received funds in an amount greater than US\$1,000, and (iv) do not otherwise hold any kind or type of assets, including an ownership interest in any corporation, limited liability company, or other similar entity.⁹
- iv. “Subsidiaries,” or entities whose ownership interests are controlled or wholly owned, directly or indirectly, by one or more exempt entities.¹⁰

Each of these exempt entities is enumerated in the CTA, and FinCEN declined to recommend any additional exemptions in the Final Rule.

⁵ 31 U.S.C. § 5336(A)(11).

⁶ 31 U.S.C. § 5336(B)(11)(i)-(xx).

⁷ *Id.*

⁸ 31 U.S.C. § 5336(B)(11)(xxi).

⁹ 31 U.S.C. § 5336(B)(11)(xxiii).

¹⁰ 31 U.S.C. § 5336(B)(11)(xxii).



III. Whose Information Must Be Reported?

Reporting Companies must disclose certain identifying company information and certain individuals' information, such individuals referred to as the Reporting Company's (i) Beneficial Owners and (ii) Company Applicants, each as defined below.

Beneficial Owners

Reporting Companies must disclose information about "Beneficial Owners," or **all** individuals, including at least one, 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.¹¹

An individual exercises "substantial control" over a Reporting Company if such individual:

- i. Serves as a senior officer of the Reporting Company other than corporate secretaries, treasurers, and other roles that entail ministerial functions with little control over the Reporting Company;¹²
- ii. Has authority over the appointment or removal of any senior officer or a majority of the board of directors of the Reporting Company;¹³
- iii. Directs, determines, or exercises substantial influence over important decisions made by the Reporting Company, such as, but not limited to, (a) the nature, scope, and attributes of the Reporting Company's business including the sale, lease, mortgage, or other transfer of any principal assets, (b) a reorganization, dissolution, or merger, (c) major expenditures or investments, issuances of any equity, incurrence of any significant debt, or approval of the operating budget, (d) the selection or termination of business lines or ventures, (e) compensation schemes and incentive programs for senior officers, (f) the entry into or termination, or the fulfillment or non-fulfillment, of significant contracts, or (g) amendments of any government documents of the Reporting Company;¹⁴ or
- iv. Has any other form of substantial control over the Reporting Company, such as through:
 1. Board representation;
 2. Rights associated with any financing arrangement or interest in a company;

¹¹ 31 U.S.C. 5336(a)(3).

¹² Federal Register, 87 FR 59526. The title of the officer is ultimately not dispositive and the underlying question is whether the individual is exercising the authority or performing the functions of a senior officer, or otherwise has authority indicative of Substantial Control.

¹³ Federal Register, 87 FR 59527.

¹⁴ Federal Register, 87 FR 59526; 31 CFR 1010.380(d)(1)(i)(C)(1)-(7).



3. Control over one or more intermediary entities that separately or collectively exercise substantial control over the Reporting Company;
4. Ownership or control of a majority of the voting power or voting rights of the Reporting Company;
5. Arrangements or financial or business relationships, whether formal or informal, with other individuals or entities acting as nominees; or
6. Any other contract, arrangement, understanding, relationship, or otherwise.¹⁵

The Final Rule defines “ownership interests” as (a) any equity, stock, or equitable instrument; (b) any capital or profit interest; and (c) any instrument, contract, arrangement, understanding, or mechanism used to establish ownership.¹⁶

The definition of Beneficial Owner does **not** include (a) minor children; (b) individuals acting as nominees, intermediaries, custodians, or agents; (c) employees acting solely as employees and not senior officers, (d) individuals whose only interest in the Reporting Company is a future interest through a right of inheritance, and (e) creditors of a Reporting Company.¹⁷

Company Applicants

Reporting Companies must also disclose information about “Company Applicants,” who are the **one to two individuals** primarily responsible for directing or controlling the filing of the formation documents for the Reporting Company.¹⁸ The Company Applicant is either: (1) the individual who directly files the document that creates the entity/the document that first registered the entity to do business within the U.S., or (2) the individual primarily responsible for directing or controlling the filing of the relevant document by another.¹⁹

IV. Information That Must Be Reported

Information must be shared about (i) the Reporting Company, and (ii) the Reporting Company’s Beneficial Owners and Company Applicants.

i. Information about the Reporting Company:

1. Full legal name,
2. Any trade or d/b/a names, regardless of whether formally registered,
3. Complete, current address comprising (a) in the case of a Reporting Company with a principal place of business in the United States, the street address of the principal place of business; (b) in all other cases, the street address where the Reporting Company primarily does business in the US,
4. Jurisdiction of formation,

¹⁵ Federal Register, 87 FR 59526; 31 CFR 1010.380(d)(1)(iv).

¹⁶ Federal Register, 87 FR 59530; 31 CFR 1010.380(d)(2)(i).

¹⁷ 31 U.S.C. 5336(a)(3)(B).

¹⁸ Federal Register, 87 FR 59536; 31 CFR 1010.380(e)

¹⁹ *Id.*



5. The Taxpayer Identification Number (“TIN”) used by the Internal Revenue Service (“IRS”) (including an Employer Identification Number), a tax identification number issued by a foreign jurisdiction and the name of that jurisdiction or, where a Reporting Company has not yet been issued a TIN, either a Dun & Bradstreet Data Universal Numbering System (“DUNS”) Number²⁰ or a Legal Entity Identifier²¹ (“LEI”).²²
- ii. Information about Beneficial Owners and Company Applicants:
1. Full legal name,
 2. Date of birth,
 3. Complete, current address comprising (a) each individual’s residential street address, except for (b) Company Applicants acting in the course of the Company Applicant’s business, in which case the street address of the Company Applicant’s business,
 4. A unique identifying number from an acceptable, non-expired identification document, and an image of such document. Acceptable identification documents include (a) US passports, (b) identification documents issued by a state, local government, or Native American tribe, (c) state-issued driver’s licenses, and (d) foreign passports.²³

V. **FinCEN Identifiers**

Individuals and Reporting Companies may apply for a “FinCEN Identifier”, which is a unique number issued by FinCEN that may be submitted to FinCEN for future filings in lieu of submitting the entire set of data required in BOI Reports.²⁴ Each FinCEN Identifier is specific to the individual or Reporting Company and only one FinCEN Identifier can be obtained. The process of obtaining a FinCEN Identifier is different depending on whether the applicant is an individual or Reporting Company:

- i. Individuals. Individuals may submit an application to FinCEN for a FinCEN Identifier that contains all of the information that otherwise has to be set forth in the initial report about the individual. An individual who has obtained a FinCEN Identifier may submit it to the Reporting Company, and the Reporting Company can include the FinCEN Identifier in lieu of the information otherwise required.²⁵
- ii. Reporting Companies. A Reporting Company may obtain a FinCEN Identifier by submitting an application at or after the time that the Reporting Company submits

²⁰ A DUNS number is a unique nine-digit identification number provided by Dun & Bradstreet for business credit reporting purposes. See [Dun & Bradstreet](#) for more information.

²¹ An LEI is a reference code — like a bar code — used across markets and jurisdictions to uniquely identify a legally distinct entity that engages in a financial transaction. Please see the [Office of Financial Research](#) for more information.

²² 31 U.S.C. 5336(b)(2).

²³ *Id.*

²⁴ 31 U.S.C. 5336(b)(3).

²⁵ 31 U.S.C. 5336(b)(3)(B).



an initial report.²⁶ If a reporting company has applied for and received a FinCEN Identifier, it may submit the FinCEN Identifier in lieu of a TIN, DUNS Number, or LEI.²⁷

There are two primary reasons individuals might seek FinCEN Identifiers: (i) data security, where an individual would prefer to submit their personal data directly to FinCEN rather than through the Reporting Company, and (ii) administrative efficiency, where an individual is likely to be identified as the Beneficial Owner or Company Applicant of numerous Reporting Companies.²⁸ Still, FinCEN estimates that the number of individuals who will apply for a FinCEN Identifier will be low, approximately 1% of the estimated number of Reporting Company applicants.²⁹

V. How Must BOI Reports Be Filed?

FinCEN is still developing the secure filing system necessary to administer these requirements. On September 29, 2022, FinCEN announced they would publish in the Federal Register for public comment the reporting forms that Reporting Companies will use to comply with the Reporting Requirements “well in advance” of the Final Rule’s effective date.³⁰

VI. When Must BOI Reports Be Filed?

The Final Rule goes into effect on January 1, 2024. **Reporting Companies created or registered prior to January 1, 2024, will have one year** (January 1, 2025) to file their initial reports,³¹ while **Reporting Companies created or registered after the Final Rule’s effective date will have 30 days** after receiving notice of their creation or registration to file their initial reports.³² Reporting Companies created or registered prior to January 1, 2024, do not have to submit information for Company Applicants. Instead, such Reporting Companies will only have to submit information for the Reporting Company and its Beneficial Owners.³³

Reporting Companies have 30 days to report changes to the information in previously filed reports and must correct inaccurate information in previously filed reports within 30 days of when the Reporting Company becomes aware of the inaccuracy of the information.³⁴

²⁶ 31 U.S.C. 5336(b)(3)(C).

²⁷ Federal Register, 86 FR 69932; 31 CFR 1010.380(b).

²⁸ FinCEN, Beneficial Ownership Information Access and Safeguards, and Use of FinCEN Identifiers for Entities, [a Proposed Rule by the Financial Crimes Enforcement Network on 12/16/2022](#).

²⁹ *Id.*

³⁰ FinCEN, [Beneficial Ownership Information Reporting Rule Fact Sheet](#).

³¹ Federal Register, 87 FR 59592; 31 CFR 1010.380(a)(1)(iii).

³² Federal Register, 87 FR 59591; 31 CFR 1010.380(a)(1)(ii).

³³ Federal Register, 87 FR 59593; 31 CFR 1010.380(b)(2)(iv).

³⁴ Federal Register, 87 FR 59592; 31 CFR 1010.380(a)(3).