

November 18, 2022

Vol. XXXIV, No. 25

FINCEN BENEFICIAL OWNERSHIP REPORTING RULE

I. INTRODUCTION

The U.S Treasury's Financial Crimes Enforcement Network (FinCEN) has issued a final rule implementing the beneficial ownership information (BOI) reporting provisions established by the Corporate Transparency Act. The Act and its Implementing regulation are designed to inhibit the ability of illicit actors to use shell companies to launder their money or hide assets.

The rule establishes: a) who must file a BOI report; b) what information must be reported; and c) when a report is due. The final rule also requires reporting companies to file reports with FinCEN that identify two categories of individuals: (1) the beneficial owners of the entity; (2) the company applicants of the entity.

Two additional rules, covering access to the database and an update to the existing Consumer Due Diligence rule will be issued by FinCEN in the future. The additional rules will (1) establish rules for who may access BOI, for what purposes, and what safeguards will be required to ensure that the information is secured and protected; and (2) revise the FinCEN customer due diligence rule following the promulgation of the BOI reporting final rule.

II. REPORTING COMPANIES

The Federal rule creates 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.
- Twenty-three types of legal entities are exempt under the final rule. Other legal entities, including certain trusts, are excluded to the extent that they are not created by the filing of a document with a secretary of state or similar office.

III. BENEFICIAL OWNER

A beneficial owner is defined as an individual who, directly or indirectly, either (1) exercises substantial control over a reporting company, or (2) owns or controls at least 25 percent of the ownership interests of a reporting company.

- Substantial control is defined by a range of activities that could constitute substantial control of a reporting company, including anyone able to make important decisions on behalf of the entity.
- Ownership is defined by 25% or more of the ownership interests of the company and addresses how a reporting company should handle a situation in which ownership interests are held in trust.

IV. COMPANY APPLICANTS

The rule does not require reporting companies that exist or are registered at the time of the effective date of the rule to identify and report on their company applicants. A company applicant is defined as:

- 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.

Reporting companies formed or registered after the effective date of the rule do not need to update company applicant information.

V. BENEFICIAL OWNERSHIP INFORMATION

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.

Reporting companies will be required to report as follows:

- Companies created after January 1, 2024, must provide the four pieces of information and document image for company applicants.

FinCEN Identifier: 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 BOI report in lieu of the required information about the individual.

VI. EFFECTIVE DATE

The effective date of the final rule is January 1, 2024. Companies created or registered before January 1, 2024, have one year (until January 1, 2025) to file their initial reports. 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.

In addition to their initial reports, reporting companies will have 30 days to report changes to the information in their previously filed reports and must correct inaccurate information in previously filed reports.

The foregoing Compliance Update is for informational purposes only and does not constitute legal advice. As a reminder, the NBA general counsel is the attorney for the Nebraska Bankers Association, not its member banks. The general counsel is available to assist members with finding resources to help answer their questions. However, for specific legal advice about specific situations, members must consult and retain their own attorney.