

Beneficial Ownership Reporting To Take Effect In 2024

The U.S. Treasury's Financial Crimes Enforcement Network (FinCEN) has issued a final rule (Final Rule) establishing a beneficial ownership information reporting requirement, pursuant to the Corporate Transparency Act of 2019 (CTA), that will require most corporations, limited liability companies, and other entities created in or registered to do business in the United States to file beneficial ownership interest reports (BOI Reports) with FinCEN, which will contain information about their beneficial owners—the persons who ultimately own or control the company.

The Final Rule will be effective as of 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 creation or registration to file their initial reports. Updated or corrected BOI Reports are also required to be filed within a 30 day time period.

Beneficial Ownership Information Reports

- The BOI Report for a reporting company will be required to include: the following information: (1) the full name of the reporting company, (2) any trade name or "doing business as" name of the reporting company, (3) the principal business address of the reporting company, (4) the state or tribal jurisdiction of formation of the reporting company (or for a foreign reporting company, the state or tribal jurisdiction where such company first registers), (5) an IRS TIN of the reporting company (or, where a reporting company has not yet been issued a TIN, a foreign tax identification number,

and (6) the following four pieces of information about each of the beneficial owners (defined below) of the reporting company: name, birthdate, address, and a unique identifying number and issuing jurisdiction from one of four types of acceptable identification documents: a nonexpired U.S. passport; a nonexpired state, local, or tribal identification document; a nonexpired State-issued driver's license; or, if an individual lacks one of those other documents, a nonexpired foreign passport. (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 (defined below).

Reporting Companies

- The Final Rule identifies two types of reporting companies: domestic and foreign. A domestic reporting company is a corporation, limited liability company (LLC), or any entity (e.g., limited partnerships and business trusts) 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.
- Other types of legal entities, including sole proprietorships, general partnerships and 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.

Exempt Companies

The Final Rule sets forth 23 exemptions to the definition of reporting company, including the following:

- Securities and Exchange Commission ("SEC") reporting issuers;
- Banks and credit unions;
- Tax-exempt entities;
- Money services businesses registered with FinCEN;
- Broker-dealers; and
- U.S. governmental authorities.

Also exempted are:

- Large operating companies that (1) employ more than 20 full-time employees in the United States; (2) have an operating presence at a physical office within the United States; and (3) filed a federal income tax or information return in the United States for the previous year demonstrating more than \$5,000,000 in gross receipts or sales;
- Inactive entities that were in existence on or before January 1, 2020, and meet other requirements;
- Pooled investment vehicles operated or advised by a qualifying bank, credit union, broker-dealer, investment company or investment adviser, or venture capital fund adviser (a pooled investment vehicle is defined as (i) any investment company, as defined under the Investment Company Act of 1940, or (ii) any company that would be an investment company under that authority but for the exclusion provided therein and is identified by its legal name by the applicable investment adviser in the requisite Securities and Exchange Commission form);
- Subsidiaries whose ownership interests are controlled or wholly owned, directly or indirectly, by one or more exempt entities subject to exceptions (e.g., subsidiaries of pooled investment vehicles are not eligible for the subsidiary exemption);
- Investment companies and investment advisers registered with the SEC; and
- Venture capital fund advisers that have filed Item 10, Schedule A, and Schedule B of Part 1A of Form ADV, or any successor thereto, with the SEC.

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 twenty-five percent (25%) of the ownership interests of a reporting company. The Final Rule defines the terms “substantial control” and “ownership interest.” The rules exempt five types of individuals from the definition of

“beneficial owner (i.e., a minor child, provided that a parent or guardian's information is reported; an individual acting as a nominee, intermediary, custodian, or agent on behalf of another individual; an individual acting solely as an employee of a reporting company in specified circumstances; an individual whose only interest in a reporting company is a future interest through a right of inheritance; and a creditor of a reporting company).

Company Applicants

- The Final Rule defines a company applicant to be only two persons:
 1. 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
 2. 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 Final Rule to identify and report on their company applicants. In addition, reporting companies formed or registered after the effective date of the Final also do not need to update company applicant information.
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This notice contains information which is general in nature and based on sources which are believed to be authoritative. Specific applications would require consideration of all facts and circumstances by qualified professionals familiar with a reporting company and therefore we (Phillips Nizer LLP) are not liable for the application of any information contained herein.

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