



FinCEN's Final Rule for Beneficial Ownership Reporting Requirements – You Can Run But You Can't Hide

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The Financial Crimes Enforcement Network (“FinCEN”) issued its final rule (“Rule”) to implement reporting requirements for beneficial ownership information on September 30, 2022. The Rule will, among other things, require most entities to file with FinCEN the beneficial owners of said entities. The requirements will apply to most companies either located in the U.S. or doing business in the U.S., including pre-existing companies.

The Rule implements Section 6403 of the Corporate Transparency Act (“CTA”), which is intended to, among other things, reduce financial crimes such as money laundering and fraud often committed by shell companies. Previously, the U.S. government and most states have not required the beneficial ownership of companies to be disclosed, which makes it difficult to track and prevent shell companies from committing illegal acts. By providing a centralized database of beneficial ownership information for companies, the Rule is intended to assist in preventing or stopping money laundering, terrorist financing, corruption, tax fraud, and other crimes committed using companies with opaque ownership structures.

The types of companies covered by the Rule include foreign and domestic “Reporting Companies.” Domestic Reporting Companies are any entities that are created by the filing of a document with a secretary of state or similar office of a jurisdiction in the U.S., including a comparable office operated by an Indian Tribe; foreign Reporting Companies are any entities that are created under the law of a foreign jurisdiction that are registered to do business with the U.S. There are a range of exceptions for legal entities whose ownership information is either already publicly available or easily obtainable, such as SEC reporting issuers, banks, governmental authorities, public utilities, tax-exempt entities and many others. Entities that fall into the “Reporting Companies” categories above must meet the requirements of the new Rule.

The Rule also sets forth the timeline for compliance. Reporting Companies created or registered to do business in the U.S. before January 1, 2024 will have until January 1, 2025 to file their initial reports containing the requisite information. Reporting Companies created or registered to do business in the U.S. after January 1, 2024 will have 30 days after creation or registration to file their initial reports. If there is a change to the information submitted to FinCEN concerning a Reporting Company, its beneficial owners, or information reported for any beneficial owner, the company must file an updated report within 30 days. If a report was submitted that contains inaccurate information that remains inaccurate, the company must file a corrected report within 30 days after the company became aware or had reason to be aware that the information was inaccurate.

FinCEN also clarified who constitutes a beneficial owner. Beneficial owners are any individuals who, directly or indirectly, either exercise substantial control over a Reporting Company or who own or control at least 25% of the ownership interests of such company. The intention is clearly to provide a wide breadth of coverage as FinCEN defined “substantial control” as one who: (i) serves as a senior officer of a Reporting Company, (ii) has authority over the appointment or removal of any senior officer or a majority or dominant majority of the board of directors (or similar body) of a Reporting Company, and (iii) those who direct, determine, or decide, or exercise substantial influence over, important matters affecting a Reporting Company.

The Rule also clarified exactly what information must be submitted in the initial reports. It requires companies to submit information to FinCEN for the Reporting Company itself and for each beneficial owner and – for newly created entities

only – the Company Applicant. “Company Applicants” are (a) individuals who file the document that creates the entity for domestic Reporting Companies and (b) for foreign Reporting Companies, the individuals that first register the entity to do business in the U.S., or anyone who is primarily responsible for directing the occurrence of either (a) or (b) above. The information required for the Reporting Company is the following: (i) the company’s full legal name and any trade name, (ii) a complete, current address, (iii) the state or jurisdiction of formation and, for any foreign Reporting Company, the state or jurisdiction where the company first registers, and (iv) the Taxpayer Identification Number or, if the Reporting Company is a foreign entity, the equivalent information. The information required for each beneficial owner and Company Applicant of the Reporting Company is the following: (i) full legal name, (ii) date of birth, (iii) complete, current address, and (iv) a unique identifier such as passport or state-issued identification (such as a driver’s license).

The potential liability for failing to comply with the requirements can be substantial. The CTA makes it a federal crime to file, or attempt to file, false reports for a Reporting Company. The CTA provides in essence that it will be illegal to willfully provide false or fraudulent beneficial ownership information to FinCEN or to willfully fail to submit the required information. Individuals that commit a violation are liable to the U.S. for a civil penalty of up to \$500 for each day that the violation continues or has not been remedied, may be fined up to \$10,000, and can face up to two years in prison.

Going forward, submitting beneficial ownership information to FinCEN will be the new normal for entities formed in the U.S. or doing business in the U.S. Many companies will be required to submit information on their beneficial ownership and to keep that information up-to-date. The application of the Rule is intentionally broad and will cover many companies that do business in the U.S., and the consequences of noncompliance can be significant. It will be important to make sure individuals know what is required and when. We will update this article with any future developments concerning the Rule.