



# Regulatory Alert for Financial Services

Regulatory Insights

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## Financial Crime: FinCEN final rule on beneficial ownership

*With the issuance of FinCEN's final rule, companies should expect continued regulatory attention on matters involving beneficial ownership, due diligence, SAR filings, and anti-corruption compliance programs. (Note: FinCEN's rule for reporting beneficial ownership information is the first of three rulemakings that will implement the provisions of the CTA and inform the content of a national database on corporate ownership. The additional rulemakings will (1) establish rules for who may access BOI, for what purposes, and the safeguards that will be required to ensure the information is secured and protected; and (2) revise FinCEN's customer due diligence rule following the promulgation of the BOI reporting final rule.)*

The Department of the Treasury's Financial Crimes Enforcement Network (FinCEN) has issued a [final rule](#) implementing the beneficial ownership information (BOI) reporting provisions of Corporate Transparency Act (CTA). As adopted, the final rule is "largely as proposed" in December 2021 (see KPMG Regulatory Alert here) The rule seeks to enhance FinCEN's and other agencies' ability to protect U.S. national security and the financial system and provide essential information to national security, intelligence, and law enforcement agencies, state, local, and Tribal officials, and financial institutions to help prevent illicit financing activities. The effective date for the rule is January 1, 2024; reporting companies in existence on that date must file a report no later than January 1, 2025, while reporting companies created or registered after January 1, 2024, must file a report within 30 days.

Key provisions of the final rule are outlined below.

### Beneficial Ownership Information Reporting Requirements

The final rule outlines who is required to submit a BOI report, as well as when and what information is required.

### Reporting Companies

- Two types of reporting companies are defined—domestic and foreign—depending on where the entity was formed, and with whom the entity filed and registered for business. In both instances, the definition includes corporations, limited liability companies, and any entity formed with (or registered to do business with) any secretary of state or similar office of a state or Native American tribe.
- In keeping with the CTA, 23 types of entities are exempt from the definition of "reporting company," including certain types of trusts. These exempt entities generally include entities subject to "substantial federal or state regulation" such as securities issuers, banks, depository institution holding companies, and insurance companies.
- Reporting companies must identify two categories of individuals:
  - **Beneficial owners** of the entity
  - **Individuals** who filed the application to form the entity or registered it to do business (see more below on Company Applicants).



## Beneficial Owners

- A “beneficial owner” is defined to include any individual who:
  - Exercises direct or indirect “substantial control” over a reporting company (as defined in the rule), or
  - Owns or controls at least 25 percent of the “ownership interests” of a reporting company.
- In keeping with the CTA, five types of individuals are excepted from the definition of “beneficial owner,” subject to certain conditions, including minor children, nominees or other intermediaries, employees, inheritors, and creditors.
- In defining who has “substantial control,” the rule outlines a range of activities that could constitute “substantial control” of a company, including i) service as a senior officer; ii) authority over the appointment or removal of any senior officer; and iii) direction, determination, or decision of, or substantial influence over important decisions made by the reporting company.

## Company Applicants

- The final rule defines a company applicant to be only two people:
  - For domestic reporting companies, a “company applicant” is the individual who files the document that forms the entity, or for foreign reporting companies, the document that first registers the entity to do business in the United States
  - The individual who directs or controls the filing of the relevant documents by another person
- The rule does not require reporting companies that exist or are registered as of January 1, 2024 to identify or report on their company applicants. In addition, reporting companies formed or registered after January 1, 2024, will be required to report on their company applicants with their initial report but will not be required to provide updates.

## Beneficial Ownership Information Reports

- When filing BOI reports with FinCEN, the reporting company is required to identify for itself and each of its beneficial owners and company applicants: name, birthdate, address, and a unique identifying number from an acceptable identification document.

- If an individual provides his or her BOI to FinCEN, the individual can obtain a “FinCEN identifier,” which can then be provided to FinCEN in lieu of other required information about the individual.

## Timing

- Reporting companies created or registered before January 1, 2024, will 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 (extended from the proposed 14 days) after receiving notice of their creation or registration to file their initial reports.
- Reporting companies have 30 days to file updates or changes to their previously filed reports, as well as to correct inaccurate reports after they “become aware or have reason to know” the reported information is inaccurate.
- In keeping with the CTA, any person that willfully provides, or attempts to provide, false or fraudulent beneficial ownership information, or willfully fails to report complete or updated beneficial ownership information may be subject to civil or criminal penalties.

## FinCEN Next Steps

FinCEN states that will publish for comment the reporting forms that will be used to comply with the reporting obligations under the BOI rule. It also intends to develop compliance and guidance documents to assist reporting companies with compliance.

### Please refer to:

- [Press Release: FinCEN Issues Final Rule for Beneficial Ownership Reporting to Support Law Enforcement Efforts, Counter Illicit Finance, and Increase Transparency](#)
- [FinCEN Fact Sheet: Beneficial Ownership Information Reporting Rule](#)
- [Secretary Yellen Statement: New Rule Under the Corporate Transparency Act](#)

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