A VERY IMPORTANT NOTICE OF
UPCOMING FEDERAL FILING REQUIREMENTS

In 2021, the federal government passed **The Corporate Transparency Act of 2019**. This law becomes operational **January 1, 2024**. [1]

Overview

The Corporate Transparency Act (CTA) establishes uniform **beneficial ownership information reporting requirements** for certain types of corporations, limited liability companies, and other similar entities created in or registered to do business in the United States. The CTA authorizes The Financial Crimes Enforcement Network ("FINCEN") to collect that information and disclose it to authorized government authorities and financial institutions, subject to effective safeguards and controls. The CTA and its implementing regulations will provide essential information to law enforcement, national security agencies, and others to help prevent criminals, terrorists, proliferators, and corrupt oligarchs from hiding illicit money or other property in the United States. The CTA is part of the Anti-Money Laundering Act of 2020 (AML Act).

This final rule represents the culmination of years of bipartisan efforts by Congress, the Treasury, national security agencies, law enforcement, and other stakeholders to bolster the United States' corporate transparency framework. It addresses deficiencies in the U.S. anti-money laundering regime as identified by the Financial Action Task Force—the international standard-setting body for anti-money laundering and countering the financing of terrorism and proliferation of weapons of mass destruction standards—and delivers on commitments made by the United States ahead of the December 2021 Summit for Democracy and in the first-ever U.S. Strategy on Countering Corruption

See the Code of Federal Regulations: 31 CFR 1010.380(C)(1).

CAVEAT : This reporting is not an activity within the role of a registered agent. If you wish to have our assistance in your reporting, then you must engage us at our hourly rate.

What entities are covered?

The rule identifies 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.

Under the rule, and in keeping with the CTA, twenty-three types of entities are exempt from the definition of "reporting company."

FinCEN expects that these definitions mean that reporting companies will include (subject to the applicability of specific exemptions) limited liability partnerships,

[1] H.R. 2513, 116th Congress, 1st Session; This was an amendment to The Bank Secrecy Act by adding section 5336 to it.

limited liability limited partnerships, business trusts, and most limited partnerships, in addition to corporations and LLCs, because such entities are generally created by a filing with a secretary of state or similar office.

Are there exemptions from this filing? Yes.

There are twenty-three exemptions including certain trusts, which are excluded from the definition of a covered entity, to the extent that the entity was not created by the filing of a document with a secretary of state or similar office. FinCEN recognizes that in many states the creation of most trusts typically does not involve the filing of such a formation document.

To determine if your company is considered an exempt large entity look at specific exemption #21 below. A large entity that employs more than 20 full time employees in the United States, as defined in the exemption; has an operating presence at a physical office within the United States, and 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 either individually or on consolidated returns.

To determine if your company is considered an inactive exempt entity see exemption #23 below.

Here are the exemptions. For specifics of their exact definition, see the regulations:

1. Securities reporting issuer

2. Governmental authority

3. Bank

4. Credit union

5. Depository institution holding company

6. Money services business

7. Broker or dealer in securities

8. Securities exchange or clearing agency

9. Other Exchange Act registered entity

10. Investment company or investment adviser as defined in Sec. 3 of the Investment Company Act of 1940 or is an investment adviser as defined in Sec. 202 of the Investment Advisers Act of 1940, and (B) registered with the SEC under the Investment Company Act of 1940 or the Investment Advisers Act of 1940.

11. Venture capital fund adviser
Any investment adviser that: (A) is described in section 203(l) of the Investment Advisers Act of 1940, and (B) has filed Item 10, Schedule A, and Schedule B of Part 1A of Form ADV, or any successor thereto, with the SEC.

12. Insurance company

13. State-licensed insurance producer

14. Commodity Exchange Act registered entity

15. Accounting firm Any public accounting firm registered in accordance with Sec. 102 of the Sarbanes-Oxley Act of 2002.

16. Public utility

17. Financial market utility Any financial market utility designated by the Financial Stability Oversight Council under Sec. 804 of the Payment, Clearing, and Settlement Supervision Act of 2010.

18. Pooled investment vehicle Any pooled investment vehicle that is operated or advised by a person described in exemptions 3 (bank), 4 (credit union), 7 (broker or dealer in securities), 10 (investment company or investment adviser), or 11 (venture capital fund adviser).

19. Tax-exempt entity Any entity that is: (A) an organization that is described in Sec. 501(c) of the Internal Revenue Code of 1986 (determined without regard to Sec. 508(a) of the Code) and exempt from tax under Sec. 501(a) of the Code, except that in the case of any such organization that ceases to be described in Sec. 501(c) and exempt from tax under Sec. 501(a), such organization shall be considered to continue to be described as a tax-exempt entity for the 180-day period beginning on the date of the loss of such tax-exempt status, (B) a political organization, as defined in Sec. 527(e)(1) of the Code, that is exempt from tax under Sec. 527(a) of the Code, or (C) a trust described in paragraph (1) or (2) of Sec. 4947(a) of the Code.

20. Entity assisting a tax-exempt entity

21. **Large operating company**
Any entity that: (A) employs more than 20 full time employees in the United States, with "full time employee in the United States" having the meaning provided in 26 CFR 54.4980H-1(a) and 54.4980H-3, except that the term "United States" as used in those sections of the CFR have the meaning provided in 31 CFR 1010.100(hhh), (B) has an operating presence at a physical office within the United States, and (C) 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, as reported as gross receipts or sales (net of returns and allowances) on the entity's IRS Form 1120, consolidated IRS Form 1120, IRS Form 1120-S, IRS Form 1065, or other applicable IRS form, excluding gross receipts or sales from sources outside the United States, as determined under Federal income tax principles. For an entity that is part of an affiliated group of corporations within the meaning of 26 USC 1504 that filed a consolidated return, the applicable amount shall be the amount reported on the consolidated return for such group.

22. Subsidiary of certain exempt entities Any entity whose ownership interests are controlled or wholly owned, directly or indirectly, by one or more entities described in exemptions 1, 2, 3, 4, 5, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 19, or 21 set forth above.

23. Inactive entity Any entity that: (A) was in existence on or before January 1, 2020, (B) is not engaged in active business, (C) is not owned by a foreign person, whether directly or indirectly, wholly or partially, (D) has not experienced any change in ownership in the preceding twelve-month period, (E) has not sent or received any funds in an amount greater than $1,000, either directly or through any financial account in which the entity or any affiliate of the entity had an interest, in the preceding 12 month period, and (F) does not otherwise hold any kind or type of assets, whether in the United States or abroad, including any ownership interest in any corporation, limited liability company, or other similar entity.

Who are the beneficial owners who must report?

The definition of who the **beneficial owners** are and who must report has been drafted to account for the various ownership or control structures reporting companies may adopt. However, for reporting companies that have simple organizational structures it should be a straightforward process to identify and report their beneficial owners. FinCEN expects the majority of reporting companies will have simple ownership structures.

Under the 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 25 percent of the ownership interests of a reporting company. The rule defines the terms "substantial control" and "ownership interest." In keeping with the CTA, the rule exempts five types of individuals from the definition of "beneficial owner."

In defining the contours of who has **substantial control**, the rule sets forth a range of activities that could constitute substantial control of a reporting company. This list includes anyone who is able to make important decisions on behalf of the entity. FinCEN's approach is designed to close loopholes that allow corporate structuring that obscures owners or decision-makers. This is crucial to unmasking anonymous shell companies.

The rule provides standards and mechanisms for determining whether an individual owns or controls 25 percent of the **ownership interests** of a reporting company. Among other things, these standards and mechanisms address how a reporting company should handle a situation in which ownership interests are held in trust.

Who is the company applicant?

A company applicant is the person who creates the organization. The rule defines a **company applicant** to be only two persons:

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 and

The individual who is primarily responsible for directing or controlling the filing of the relevant document by another.

The rule, however, does not require reporting companies existing or registered at the time of the effective date of the rule to identify and report on their company applicants. In addition, reporting companies formed or

registered after the effective date of the rule also do not need to update company applicant information.

What are the Beneficial Ownership Information Reports ("BOI reports")

When filing **BOI reports** with FinCEN, the 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). Additionally, the rule requires that reporting companies created after January 1, 2024, provide the four pieces of information and document image for company applicants.

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.

What is the timing for all of this?

The effective date for the rule is 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 receiving notice of their creation or registration to file their initial reports.

Reporting companies have 30 days to report changes to the information in their previously filed reports and must correct inaccurate information in previously filed reports within 30 days of when the reporting company becomes aware or has reason to know of the inaccuracy of information in earlier reports.

What are the next steps?

The BOI reporting rule is one of three rulemakings planned to implement the CTA. FinCEN will engage in additional rulemakings to (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 FinCEN's customer due diligence rule following the promulgation of the BOI reporting final rule.

In addition, FinCEN continues to develop the infrastructure to administer these requirements in accordance with the strict security and confidentiality requirements of the CTA, including the information technology system that will be used to store beneficial ownership information: the Beneficial Ownership Secure System (BOSS).

Consistent with its obligations under the Paperwork Reduction Act, FinCEN will publish in the Federal Register for public comment the reporting forms that people will use to comply with their obligations under the BOI reporting rule. FinCEN will publish these forms well in advance of the effective date of the BOI reporting rule.

FinCEN will develop compliance and guidance documents to assist reporting companies in complying with this rule. Some of these materials will be aimed directly at, and made available to, reporting companies themselves. FinCEN will issue a Small Entity Compliance Guide, pursuant to section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996, in order to inform small entities about their responsibilities under the rule. Other materials will be aimed at

a wide range of stakeholders that are likely to receive questions about the rule, such as secretaries of state and similar offices. FinCEN also intends to conduct extensive outreach to all stakeholders, including industry associations as well as secretaries of state and similar offices to ensure the effective implementation of the rule.

Penalties for failure to report.

As distasteful as this reporting requirement clearly is, the penalties for failure can be severe.

The violation is written in 31 USCA §5336(c)(1)

It shall be unlawful for any person to affect interstate or foreign commerce by—

"(A) knowingly providing, or attempting to provide, false or fraudulent beneficial ownership information, including a false or fraudulent identifying photograph, to FinCEN in accordance with this section.

"(B) willfully failing to provide complete or updated beneficial ownership information to FinCEN in accordance with this section; or

"(C) knowingly disclosing the existence of a subpoena or other request for beneficial ownership information reported pursuant to this section, except—

"(i) to the extent necessary to fulfill the authorized request; or

"(ii) as authorized by the entity that issued the subpoena, or other request.

Subpart (c)(2) provides CIVIL AND CRIMINAL PENALTIES.—Any person who violates paragraph (1) (above)—

"(A) shall be liable to the United States for a civil penalty of not more than $10,000; and

"(B) may be fined under title 18, United States Code, imprisoned for not more than 3 years, or both.

Subpart (c)(3) provides this LIMITATION.—Any person who negligently violates paragraph (c)(1) shall not be subject to civil or criminal penalties under paragraph (c)(2).

Subpart (c)(4) provides for WAIVER.—The Secretary of the Treasury may waive the penalty for violating paragraph (1) if the Secretary determines that the violation was due to reasonable cause and was not due to willful neglect.

Subpart (c)(5) provides for a CRIMINAL PENALTY FOR THE MISUSE OR UNAUTHORIZED DISCLOSURE OF BENEFICIAL OWNERSHIP INFORMATION.—The criminal penalties provided for under section 5322 shall apply to a violation of this section to the same extent as such criminal penalties apply to a violation described in section 5322, if the violation of this section consists of the misuse or unauthorized disclosure of beneficial ownership information.