

# U.S. Treasury Adopts Final Corporate Beneficial Ownership Reporting Rule

October 6, 2022

Last week, the Financial Crimes Enforcement Network (“FinCEN”) of the Department of the Treasury adopted a [final rule](#) (the “Final Rule”)<sup>1</sup> to implement the beneficial ownership reporting requirements of the Corporate Transparency Act (“CTA”), part of the Anti-Money Laundering Act of 2020.<sup>2</sup> This legislation requires a range of U.S. legal entities, and non-U.S. legal entities registered to do business in the United States, to report information on their underlying beneficial owners to FinCEN. The Final Rule addresses four key aspects of the CTA: who must report, when they must report, what information they must report and what penalties apply for violations of reporting requirements.

The Final Rule provides for a January 1, 2024, effective date, but FinCEN acknowledges significant additional implementation work is required. Prior to the effective date, FinCEN must design and implement a secure nonpublic database for beneficial ownership information (the “Beneficial Ownership Secure System”, or “BOSS”) and complete a separate rulemaking on protocols for collecting and accessing beneficial ownership information in the BOSS.<sup>3</sup> FinCEN’s plans also include outreach to secretaries of state and other stakeholders, preparation of guidance and FAQs, and engaging with law enforcement authorities and other authorized users of the BOSS on terms of access. In the adopting release, FinCEN observed that its ability to meet this schedule will depend on its receipt of adequate funding in Congressional appropriations, and that without additional funding, it may need to adjust its implementation and outreach plans.

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<sup>1</sup> Beneficial Ownership Information Reporting Requirements, 87 Fed. Reg. 59,498 (Sep. 30, 2022). The Final Rule follows a Notice of Proposed Rulemaking (“NPRM”) released in December 2021 and an Advanced Notice of Proposed Rulemaking (“ANPRM”) released in April 2021. *See* Beneficial Ownership Information Reporting Requirements, 86 Fed. Reg. 69,920 (Dec. 8, 2021); Beneficial Ownership Information Reporting Requirements, 86 Fed. Reg. 17,557 (Apr. 5, 2021). Our December 2021 alert memo summarizing the NPRM is available [here](#).

<sup>2</sup> The William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021, Pub. L. 116–283, 134 Stat. 3388 §§ 6001-6511 (2020).

<sup>3</sup> Under the CTA, FinCEN is also required to revise its customer due diligence rule within one year after the effective date of the Final Rule to align the two rules. *See* Customer Due Diligence Requirements for Financial Institutions, 81 Fed. Reg. 29,397 (May 11, 2016) (the “CDD Rule”).



Although FinCEN received over 240 comments on the NPRM, the Final Rule makes few substantive changes. Notable changes include longer reporting deadlines and less stringent requirements for reporting information on “company applicants”—the individuals who actually file a reporting company’s formation documents. But in many cases FinCEN declined to address specific questions raised by commenters, instead suggesting that it may address these at a later date through additional stakeholder engagement and the release of guidance and FAQs.

### **Overview**

In a major shift from current U.S. practice, the CTA requires “reporting companies” to file certain identifying information regarding the reporting company and its “company applicants” and “beneficial owners” (terms discussed below) with FinCEN. Currently, companies do not generally need to report this information to federal or state governments, but financial institutions may collect it at account opening under FinCEN’s CDD Rule.

Information reported to FinCEN under the CTA will be kept in a confidential database—the BOSS—and made available only for national security, intelligence, and law enforcement purposes, and (with customer consent) to facilitate financial institution customer due diligence requirements. Unlawful disclosures of beneficial ownership information would be subject to penalties.

The adopting release describes the CTA and the Final Rule as the culmination of years of efforts by Congress, the Treasury Department, national security and law enforcement agencies and others to address U.S. deficiencies in corporate transparency, and notes that at least 30 countries have already implemented some form of centralized register of beneficial ownership information.

The Final Rule is notable in the breadth of its reporting requirements. FinCEN has interpreted the CTA expansively to maximize the number and types of legal entities that will be required to report beneficial ownership to FinCEN, and to maximize the number and types of relationships that would cause an

individual to be deemed a beneficial owner of a reporting company. A consistent theme throughout the Final Rule is a concern that a narrower approach would increase chances for evasion and make reports less useful for law enforcement, intelligence and national security purposes.

The CTA provides a long list of exemptions from reporting, including for many regulated entities and public companies. Still, FinCEN estimates that there will be more than 32 million reporting companies in the Final Rule’s first year and an additional 5 million reporting companies each year thereafter.

Identifying and reporting beneficial owners is likely to be a straightforward exercise for most of these companies, but organizations with complex ownership structures, such as certain types of funds and partnerships, may find it difficult to interpret and apply the Final Rule’s broad and subjective definitions. Foreign companies active in the United States may also be disproportionately affected because the exemptions from reporting are generally based on a company’s U.S. operations and regulatory status.

Every company or other legal entity that has been formed or does business in the United States, either directly or through subsidiaries, and their corporate and legal advisors, should review the CTA and the Final Rule to understand whether it will impose reporting requirements on them. Going forward, the requirements of the Final Rule will need to be considered in any type of financial or corporate transaction that involves the creation or acquisition of legal entities in the United States, with relevance for mergers and acquisitions, private equity and private funds, structured finance, and restructurings, among others.

### **Key Changes from the NPRM**

The Final Rule makes a number of minor clarifying and technical changes to the NPRM, but few material substantive changes. In the most notable substantive changes, the Final Rule:

- Lengthens reporting deadlines for initial filings, updates and corrections from the NPRM’s proposed 14 days to 30 days.
- Reduces the reporting burden with respect to the “company applicants”, who are the individuals who actually file a reporting company’s formation or registration documents. Reporting companies created or registered before the effective date will not be required to report information on company applicants. No more than two individuals will need to be reported as company applicants in any filing, and updates to reflect changes to company applicant information will no longer be required.
- Reinforces the expansive definition of what counts as an ownership interest to include any “instrument, contract, arrangement, understanding, relationship, or other mechanism used to establish ownership”, and provides additional guidance on how to calculate ownership percentages for the 25 percent ownership test for beneficial owners.
- Clarifies that the individual responsibility for a reporting company’s failure to satisfy a reporting obligation rests with the persons who caused such a failure or are senior officers of the entity at the time of the failure, rather than any persons having “substantial control” of the entity at the time of the failure.

## Summary of Final Rule

### Reporting Companies Definition

The CTA defines “reporting companies” that are subject to the CTA’s reporting requirements as any “corporation, limited liability company, or other similar entity that is (i) created by the filing of a document with a secretary of state or similar office under the law of a State or Indian Tribe; or (ii) formed under the law of a foreign country and registered to do business in the United States by the filing of a document with a secretary of state or a similar office under the laws of a State or Indian Tribe.” The Final Rule modifies and expands the CTA definition by dividing reporting companies into two classes of

companies: domestic reporting companies and foreign reporting companies.

*A domestic reporting company* includes any entity that is: (i) a corporation; (ii) a limited liability company; or (iii) 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* includes any entity that is: (i) a corporation, limited liability company, or other entity; (ii) formed under the law of a foreign country; and (iii) 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 law of a State or Indian tribe.

The Final Rule’s definition of domestic reporting company expands the CTA’s definition by interpreting the concept of “similar entity” to include *any* entity that is created by filing a document with a secretary of state or similar office. In the NPRM, FinCEN stated that it expects this definition of domestic reporting company to include limited liability partnerships, limited liability limited partnerships, business trusts (a/k/a statutory trusts or Massachusetts trusts) and most limited partnerships because such entities are typically created by filing with a secretary of state or similar office. The Final Rule’s adopting release acknowledges that sole proprietorships, certain types of trusts, and general partnerships generally will not be reporting companies because such entities generally are not created through the filing of a document with a secretary of state or similar office.

The Final Rule’s definition of foreign reporting company also expands the CTA’s definition by interpreting the concept of “similar entity” for foreign companies to include *any* entity that has registered to do business with any State or Indian tribe. In the NPRM, FinCEN acknowledged that the definition of foreign reporting company may capture more types of legal entities than the definition of domestic reporting

company because U.S. states and tribal jurisdictions typically require any legal entity formed under the law of any other jurisdiction to register to do business as a “foreign” entity if it engages in certain types of activities within that state or jurisdiction.

### Exemptions from Reporting

The CTA is largely targeted at smaller, lightly regulated entities that may not be subject to other beneficial ownership reporting requirements. As a consequence, the CTA exempts many legal entities from reporting requirements, and the Final Rule implements the CTA’s list of exemptions with only a handful of changes. FinCEN declined to exercise its authority to create new classes of exempt entities, despite numerous comments suggesting additional exemptions.

Although FinCEN stated in the adopting release that it will continue to consider potential exemptions, the prospects of additional exemptions in the short term would appear remote. Under the CTA, new exemptions from the definition of reporting company may be created only by rulemaking and require a determination by the Secretary of the Treasury, with the written concurrence of the Attorney General and the Secretary of Homeland Security, that requiring the relevant class of entities to report beneficial ownership information would not serve the public interest and would not be highly useful to national security, intelligence and law enforcement agency efforts to detect, prevent, or prosecute money laundering, the financing of terrorism, proliferation finance, serious tax fraud or other crimes.

#### Entities Exempt from Reporting

*Securities reporting issuers* that have a class of securities registered under Section 12 or that are required to file reports under Section 15(d) of the Securities Exchange Act of 1934 (the “Exchange Act”).

*Governmental authorities* established under the laws of the United States, an Indian tribe, a State, a political subdivision of a State or under

an interstate compact between two or more States that exercise governmental authority on behalf of the United States or any such Indian tribe, State or political subdivision.

*Banks* as defined under the Federal Deposit Insurance Act, the Investment Company Act of 1940 (the “40 Act”) and the Investment Advisers Act of 1940 (the “Advisers Act”) (which together include U.S. banks and other depository institutions, savings associations, trust companies and state and federal branches and agencies of foreign banks).

*Federal and state credit unions.*

*Bank holding companies and savings and loan holding companies.*

*Money services businesses* if registered with FinCEN.

*SEC registrants*, including broker-dealers, securities exchanges and clearing agencies, investment companies and investment advisers, and any other entity registered with the U.S. Securities and Exchange Commission (“SEC”) under the Exchange Act.

*Venture capital fund advisers* as defined in section 203(l) of the Advisers Act, if the adviser has filed Item 10, Schedule A, and Schedule B of Part 1A of Form ADV with the SEC.

*State-regulated insurance companies.*

*State-licensed insurance producers* that have an operating presence at a physical office in the United States.

*CFTC registrants*, including futures commission merchants, introducing brokers, commodity pool operators, commodity trading advisors, retail foreign exchange dealers, swap dealers and major swap participants registered with the Commodity Futures Trading Commission and

other “registered entities” as defined in the Commodity Exchange Act.

*Public accounting firms* registered under the Sarbanes-Oxley Act.

*Public utilities* that provide telecommunications services, electrical power, natural gas, or water and sewer services within the United States.

*Financial market utilities* designated as systematically important pursuant to the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010.

*Pooled investment vehicles* that are operated or advised by an exempt bank, credit union, broker-dealer, investment company, investment adviser or venture capital fund adviser (although the definition of pooled investment vehicle is limited to (i) investment companies as defined in the 40 Act and (ii) companies that would be an investment company but for Section 3(c)(1) or 3(c)(7) of the 40 Act and that are or will be reported on their adviser’s Form ADV, which may not capture the full scope of investment vehicles operated or advised by these types of entities).

*Certain tax-exempt entities* under Sections 501(a) (non-profit organizations), 527(a) (political organizations) or 4947(a) (non-exempt charitable trusts and split-interest trusts) of the Internal Revenue Code of 1986, and certain U.S. entities that operate exclusively to provide assistance to, or hold governance rights over, such tax-exempt entities.

*Large operating companies* that (i) employ more than 20 employees on a full-time basis in the United States,<sup>4</sup> (ii) have an operating presence at a physical office within the United States and (iii) filed in the previous year Federal

income tax returns in the United States demonstrating more than \$5 million in gross receipts or sales in the aggregate, including the receipts or sales of other entities owned by the entity and other entities through which the entity operates, but excluding gross receipts or sales from sources outside the United States.

*Subsidiaries of exempt entities*, if wholly owned by another exempt entity, except that subsidiaries of exempt money services businesses, pooled investment vehicles, entities that assist tax exempt organizations and inactive entities would not be exempt.

*Inactive entities* that (i) were in existence on or before January 1, 2020, (ii) are not engaged in active business, (iii) are not owned, directly or indirectly, by a foreign person, (iv) have not experienced any change in ownership in the prior 12-month period, (v) have not sent or received funds in an amount greater than \$1,000 in the preceding 12-month period and (vi) do 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.

Given the breadth of reporting companies captured by the Final Rule, and the Final Rule’s extensive and subjective definition of beneficial owner (discussed below), these exemptions will be critical to mitigating the burden placed on legal entities that may otherwise have to report. Of particular note, the exemptions are primarily available to larger domestic U.S. companies and to U.S.-regulated entities, and may not be of much value for smaller U.S. subsidiaries and offices of foreign companies, even where the foreign parent is publicly traded, or is a large employer and/or a regulated entity outside of the United States that would be exempt if domiciled in the United States.

<sup>4</sup> The adopting release states that FinCEN has declined to permit companies to consolidate headcount across affiliated entities.

## Reporting Requirements for Reporting Companies

The Final Rule requires reporting companies to file a report with FinCEN that provides identifying information for the reporting company, its beneficial owners and any company applicants. Each report must include a certification from the reporting company that the report is true, correct and complete. The adopting release clarifies that because the certification requirement applies to the company, any individual filing a report as a company's agent would be certifying on behalf of the company, and not in their personal capacity.

## Reporting Company Information

The Final Rule requires each report to include the following information on the reporting company: (i) full legal name, (ii) alternative names through which the company is engaging in business (such as trade names and d/b/a names), (iii) U.S. street address of the company's principal place of business, or if the company does not have a principal place of business in the U.S., the primary location in the U.S. where the company conducts business, (iv) jurisdiction of formation or registration, and (v) IRS "Taxpayer Identification Number" or "TIN".

The Final Rule allows foreign companies to provide a foreign tax identification number and the name of the relevant jurisdiction if the company has not been issued a TIN.

The adopting release notes that the requirement for a business street address would not be satisfied by the use of a P.O. box or the address of a reporting company's formation agent or other third-party representative.

## Beneficial Owner and Company Applicant Information

The Final Rule requires that reporting companies provide, for each individual that is a beneficial owner, such individual's (i) full legal name, (ii) date of birth, (iii) current residential street address, and (iv) a unique identifying number and the issuing jurisdiction from a

non-expired U.S. passport, non-expired identification document issued by a State, local government or Indian tribe, or non-expired driver's license or, if none of the foregoing is available, a non-expired foreign passport. The same information must be provided for company applicants, except that company applicants who form or register companies as part of their business (e.g., corporate service providers) are required to use a business street address rather than a residential address.

A scanned image of the identification document for each individual that provides the individual's unique identifying number must also be submitted. These images will need to be updated only when there is a change in the legal name, date of birth, residential or business street address, or unique identifying number. Other changes in information in the identification document, like expiration dates, need not be reported.

## Special Reporting Rules

The Final Rule includes certain modifications of the baseline reporting requirements to cover certain special situations:<sup>5</sup>

- *Ownership through an exempt entity.* If an individual is a beneficial owner exclusively by virtue of an ownership interest held directly or indirectly by one or more exempt entities, then the reporting company may provide the names of the exempt entities in lieu of information on the individual.
- *Foreign pooled investment vehicles.* Exempt pooled investment vehicles, if organized outside the United States, must report one individual that exercises substantial control over the vehicle. If there is more than one individual with substantial control, the individual with greatest authority over strategic management must be reported.
- *FinCEN identifying numbers.* Under the CTA, individuals and reporting companies can apply to FinCEN for a unique identifying number (a "FinCEN Identifier") that can be provided in

<sup>5</sup> Special rules for minor children and company applicants are addressed elsewhere in this alert.

reports in lieu of the required information for the individual or company. The Final Rule provides for the issuance of FinCEN Identifiers and provides that reporting companies can supply an individual's FinCEN Identifier in lieu of other identifying information for that individual, but FinCEN deferred providing information on the process for obtaining a FinCEN Identifier until a later date. FinCEN also deferred implementing provisions of the NPRM that would allow a reporting company to substitute its FinCEN Identifier for other required information pending further consideration, citing commenter concerns that the NPRM's proposed approach could result in incomplete or misleading disclosures.

### Beneficial Owner Definition

The CTA defines a beneficial owner as any "individual who, directly or indirectly, through any contract, arrangement, understanding, relationship, or otherwise (i) exercises substantial control over the entity; or (ii) owns or controls not less than 25 percent of the ownership interests of the entity." The CTA does not, however, define "substantial control" or "ownership interest".

#### Definition of Substantial Control

The Final Rule adopts an expansive and subjective definition for individuals with substantial control, covering both *de jure* and *de facto* control. It identifies three specific indicators and a fourth catch-all provision in the definition, which cover:

- service as a senior officer of a reporting company;<sup>6</sup>
- authority over the appointment or removal of any senior officer or a majority of the board of directors (or similar body) of a reporting company;

- direction or determination of, or substantial influence over, important decisions made by a reporting company; and
- any other form of substantial control over the reporting company.

The Final Rule provides a non-exclusive list of examples where an individual's ability to direct, determine or exercise substantial influence over important decisions (the third prong of the proposed definition) constitutes substantial control, including decisions made regarding:

- the nature, scope and attributes of the business of the reporting company, including the sale, lease, mortgage or other transfer of any principal assets;
- reorganization, dissolution or merger;
- major expenditures or investments, issuances of any equity, incurrence of any significant debt or approval of the operating budget;
- the selection or termination of business lines or ventures, or geographic focus, of the reporting company;
- compensation schemes and incentive programs for senior officers;
- the entry into or termination, or the fulfillment or non-fulfillment of significant contracts; and
- amendments of any substantial governance documents of the reporting company, including the articles of incorporation or similar formation documents, bylaws and significant policies or procedures.

The Final Rule also provides a non-exclusive list of means through which an individual may directly or indirectly exercise substantial control over a reporting company, including as a trustee

<sup>6</sup> A senior officer is defined as "any individual holding the position or exercising the authority of a president, chief financial officer, general

counsel, chief executive officer, chief operating officer, or any other officer, regardless of official title, who performs a similar function."

of a trust or similar arrangement. The list includes:

- board representation;
- ownership or control of a majority of the voting power or voting rights of the reporting company;
- rights associated with any financing arrangement or interest in a company;
- control over one or more intermediary entities that separately or collectively exercise substantial control over a reporting company;
- arrangements or financial or business relationships, whether formal or informal, with other individuals or entities acting as nominees; or
- any other contract, arrangement, understanding, relationship or otherwise.

When combined with the requirement that the reporting company identify *every* individual with substantial control of the company—a sharp contrast to the CDD Rule, which requires only one beneficial owner to be identified under its control test—the Final Rule’s definition of substantial control may prove challenging for reporting companies both in initial reporting and in monitoring and updating previously provided information regarding controlling persons.

FinCEN’s decision to cast a wide net, rather than use a narrower definition and more limited reporting obligation that is easier to administer, is driven by a concern that a narrower definition would create opportunities for evasion. The fourth catch-all definition in particular is intended to capture control exercised in “novel and less conventional ways”.

FinCEN expects that every reporting company will identify at least one beneficial owner under the “substantial control” prong, and the adopting release observes that where multiple individuals exercise essentially equal authority, it is likely they would all

have “substantial control” based on the “substantial influence” standard in its definition.

For most small reporting companies with simple governance structures, identifying the individuals with “substantial control” should still be relatively straightforward. But even simple companies may encounter grey areas and borderline cases, and for companies that have more complex governance arrangements, the definition of substantial control is likely to present challenges.

### Definition of Ownership Interest

The Final Rule also takes an expansive approach to defining ownership interest, which includes:

- any equity, stock, or similar instrument, preorganization certificate or subscription, transferable share of, or voting trust certificate or certificate of deposit for, an equity security, interest in a joint venture, or certificate of interest in a business trust, without regard to whether any such instrument is transferable, is classified as stock or anything similar, or confers voting power or rights;
- any capital or profit interest in an entity;
- any instrument convertible, with or without consideration, into any share or instrument described in the prior paragraphs, any future on any such instrument, or any warrant or right to purchase, sell or subscribe to a share or interest described in the prior paragraphs, regardless of whether characterized as debt;
- any put, call, straddle or other option or privilege of buying or selling any of the items described in the prior paragraphs without being bound to do so; or



- any other instrument, contract, arrangement, understanding, relationship or other mechanism used to establish ownership.

The Final Rule further provides that an individual can be deemed to have direct or indirect ownership or control of an ownership interest through any contract, arrangement, understanding, relationship or otherwise, including through:

- joint ownership with one or more other persons of an undivided interest in such ownership interest;
- another individual acting as a nominee, intermediary, custodian or agent on behalf such individual; and
- with regard to a trust or similar arrangement that holds an ownership interest:
  - acting as a trustee of the trust or other individual (if any) with the authority to dispose of trust assets;
  - being a beneficiary of the trust who (i) is the sole permissible recipient of income and principal from the trust or (ii) has the right to demand a distribution of or withdraw substantially all of the assets from the trust; or
  - being a grantor or settlor who has the right to revoke the trust or otherwise withdraw the assets of the trust; or
- through ownership or control of one or more intermediary entities, or ownership or control of the ownership interests of any such entities, that separately or collectively own or control ownership interests of the reporting company.

When determining whether an individual owns or controls at least 25 percent of the ownership interests

of a reporting company, the total ownership interests that an individual owns or controls, directly or indirectly, should be calculated at the present time as a percentage of the total outstanding ownership interests of the reporting company, using the following guidelines:

- Options and similar interests are treated as though exercised and are added to the calculation of an individual's total ownership interests. Such contingent interests can be excluded if created and held by a third party without the knowledge or involvement of the reporting company (although the reporting company must count any such interests it is aware of).
- An individual's percentage of ownership interests in an entity that issues capital or profit interests (including entities treated as partnerships for federal income tax purposes) is the individual's capital and profit interests in the entity, calculated as a percentage of the total outstanding capital and profit interests of the entity.
- An individual's percentage of ownership interests in a corporation, an entity treated as a corporation for federal income tax purposes, or other entity that issues shares of stock, is the greater of: (1) the total combined voting power of all classes of ownership interests of the individual as a percentage of total outstanding voting power of all classes of ownership interests entitled to vote, or (2) the total combined value of the ownership interests of the individual as a percentage of the total outstanding value of all classes of ownership interest.
- A fallback rule provides that if facts and circumstances do not permit the calculation of ownership interest with reasonable certainty following the guidelines above, any individual who owns or controls 25 percent or more of any class or type of ownership interest of the reporting company shall be deemed to own or control 25 percent or more of the ownership interests of the reporting company.

The Final Rule's definition of ownership interest again demonstrates FinCEN's preference for a broad definition that minimizes the risk of evasion over a simpler, easier-to-administer-rule. Smaller companies with simple ownership structures should generally not find it difficult to evaluate their ownership structures and identify beneficial owners under the ownership interest test. But the definition may present serious interpretive challenges in more complex cases, and the fallback rule is bound to be overinclusive in practice.

### Individuals Excluded from the Definition of Beneficial Owner

The CTA lists five categories of individuals who are excluded from the definition of beneficial owners and therefore not reportable, which the Final Rule implements with some clarifications:

- Minor children, provided the reporting company reports the minor's parent or legal guardian instead of the minor child (and indicates that the individual identified is a parent or legal guardian).
- Individuals acting as nominee, intermediary, custodian, or agent for another individual.<sup>7</sup>
- Employees of the reporting company, acting solely as employee, whose substantial control over or economic benefits from the company are derived solely from their employment status, provided that such employee is not a senior officer.
- Individuals with future interests through a right of inheritance.
- Creditors of a reporting company, if the individual would be a beneficial owner solely through rights or interests for the payment of a predetermined sum of money, such as a debt incurred by the reporting company, or a loan covenant or other similar right associated with indebtedness that is intended to secure repayment or enhance the likelihood of repayment.

<sup>7</sup> The adopting release notes that tax and legal professionals that are designated as agents of a reporting company would benefit from this exemption, and that even absent a formal agency relationship, FinCEN does not envision that ordinary, arms-length advisory or

### Applicant Definition

In addition to beneficial owners, the CTA requires a reporting company to identify and report on each of the company's "applicants". These are defined under the CTA as the individuals who file the application to form or register a reporting company with a secretary of state or similar office. The Final Rule specifies that the term "company applicant" means the individual who directly files the document to create or register the reporting company and the individual who is primarily responsible for directing or controlling such filing if more than one individual is involved in the filing. This limits the number of company applicants that must be reported for any reporting company to no more than two persons.

### Timing and Deadlines for Reporting

The CTA provides that pre-existing companies must report the required information to FinCEN not later than two years after the effective date of the reporting regulations, and that any reporting company formed or registered after the effective date of the regulations shall, at the time of formation or registration, submit to FinCEN the required information.

The Final Rule elaborates on the CTA's deadlines for information reporting.

- New domestic reporting companies and foreign entities that newly become foreign reporting companies must file their initial report with FinCEN within **30 calendar days** from the earlier of the date on which the reporting company receives actual notice that its creation (or registration) has become effective, or the date on which a secretary of state or similar office first provides public notice, such as through a publicly accessible registry, that the company has been created (or registered).

other third party professional services would give an individual substantial control over a reporting company within the meaning of the Final Rule.

- Entities formed or registered before the effective date will have **one year** after the effective date (*i.e.*, by January 1, 2025) to file their initial report.
- Previously exempt entities that no longer qualify for an exemption will have **30 calendar days** after losing the exemption to file a report. The adopting release clarifies that entities exempt as of the effective date that lose their exempt status within the first year receive the longer of (i) the one-year filing period for entities formed or registered before the effective date, or (ii) the 30 calendar day period for previously exempt entities that lose their exempt status.
- A reporting company that later becomes exempt is required to file a report indicating that the company has become exempt.
- Reporting companies will have **30 calendar days** to file updated reports upon any change to information previously reported to FinCEN concerning the reporting company or its beneficial owners, but there is no requirement to update information on company applicants (although inaccurately reported information must still be corrected as noted below).
- Reporting companies will have **30 calendar days** to correct any inaccurate information in a report beginning on the day the company becomes aware of or has a reason to know of the inaccuracy. The CTA provides for a safe harbor from liability for filing false reports with FinCEN if a company files a corrected report within 90 days of the submission of an incorrect report. Under the Final Rule, the corrected report must be filed within 30 days of discovery of the inaccuracy and within 90 days of the initial filing in order to take advantage of the safe harbor.
- If an individual is a beneficial owner of a reporting company by virtue of property interests or other rights subject to transfer upon death, and the individual dies, a change with respect to the

required information will be deemed to occur when the estate of a deceased beneficial owner is settled. The effect of this provision is to require an update to beneficial ownership information within 30 calendar days of the date the beneficial owner's estate is settled.

- A reporting company that has previously reported information with respect to a parent or legal guardian of a minor child in lieu of the minor child's information must submit an updated report when the minor child reaches the age of majority.

### Penalties

The CTA provides that any person that willfully provides (or attempts to provide) false or fraudulent beneficial ownership information (including identifying documents or photographs) to FinCEN, or willfully fails to report complete or updated beneficial ownership to FinCEN, is punishable by (i) a civil penalty of not more than \$500 for each day the violation continues and (ii) a criminal fine of not more than \$10,000 and up to two years of imprisonment.<sup>8</sup>

The Final Rule interprets the CTA's penalties for reporting violations as applying to any person (including individuals, reporting companies and other entities) that directly *or indirectly* provides beneficial ownership information to FinCEN in violation of the statute. Under the Final Rule, this includes a person that provides another person with false or fraudulent information for the purpose of reporting the information to FinCEN. It also includes any person that causes a reporting company to fail to report complete or updated beneficial ownership information, or is a senior officer of the reporting company at the time of the failure.

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<sup>8</sup> The CTA also provides for civil and criminal liability for unauthorized knowing disclosure or use of beneficial ownership information, but those provisions are not covered by the Final Rule.