

**CORPORATE TRANSPARENCY ACT UPDATE
FINAL FINCEN RULE BOI REPORTING
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FINAL RULE/EFFECTIVE DATE/BOI REPORT DUE DATES

Effective Date January 1, 2024

For entities created prior to January 1, 2024, first report due one year from effective date (so January 1, 2025).

For entities formed on or after January 1, 2024, first report due **30** days from the date of formation (the Proposed Rule had a **14**-day requirement).

Due Date for reporting changes remains at 30 days from the date of the change.

MANNER OF REPORTING – BOSS

FinCen intends reports to be filed electronically; however, the possibility was noted that some may be unable to do so; FinCen to look at alternatives such as Batch Reporting.

FinCen to develop the Beneficial Ownership Secure System (BOSS) to handle and secure the filings.

FinCen News Release indicates this will be one of three rule makings planned to implement the CTA. Access to BOI Report information TBD. Hopefully, FinCen is dialoguing with Quantum Security folks?

KEY CHANGES IN FINAL RULE – WHERE WE STAND NOW...

Comments to the Proposed Rule were voluminous. Many addressed ambiguities and overbreadth of the Proposed Rule (exceeding rule making authority provided by the CTA).

The Final Rule adopts, in most materials aspects, the Proposed Rule – the materials provide summary of FinCen’s analysis of the Comments.

MAIN CONCESSIONS OF THE FINAL RULE:

-EFFECTIVE DATE – January 1, 2024 – bought a little time to accumulate information on entities created before January 1, 2024 (now estimate in the Final Rule to be 32 million entities)

-First Report for an entity created on or AFTER the effective date – 30 days instead of the 14- day deadline in the Proposed Rule – not much of a concession, but at least 30 days will be a consistent “tickler” deadline for first reports and update/change reports (Form your entities before Dec 31, 2023 to pick up a year for first report?)

-**the ONE REAL CONCESSION** – the Proposed Rule required reporting on “Company Applicants” for ALL entities created pre and post effective date – meaning reporting on employees and other individuals from decades ago where accumulating the information would be near impossible. **The Final Rule will only require reporting information for Company Applicants for entities created ON OR AFTER THE EFFECTIVE DATE, JANUARY 1, 2024.** This one is significant relief absent which nearly every Reporting Company with a formation length of any history would have been non-compliant.

REPORTING – PROPOSED VS FINAL RULE

RESIDENTIAL ADDRESS REQUIRED REMAINS

Notwithstanding comments referencing the “Business OR Residential” address language in the CTA, reporting remains Business address for the Reporting Company (or Company Applicant if in the business of being a Company Applicant) and Residential address for Beneficial Owners and Company Applicants.

TIN Reporting

Reporting Company reporting continues to require TIN. Proposed Rule provided for “voluntary” reporting, by Reporting Company, of TIN for Beneficial Owners and Company Applicants. Following Comment, Final Rule eliminates such voluntary reporting of TIN for Beneficial Owners and Company Applicants.

“CLARIFICATION” regarding Trusts as Beneficial Owners –

Trusts deemed Beneficial Owners either via the 25% ownership threshold OR Substantial Control via its Trustee

Once a Trust is a Beneficial Owner, reporting addresses Trustee and a beneficiary who is the sole permissible recipient to receive income/principal or the right to demand distribution.

Grantor with a right to revoke is also a Beneficial Owner.

“Clarification” - exercise of Substantial Control references exercise of control **ON BEHALF OF REPORTING COMPANY**

EXEMPTIONS

Reporting Company Exemptions (23 of them) and Beneficial Owner Exemptions remain largely the same as in Proposed Rule. **FinCen declined to follow comments and alter the Dormant/Inactive Entity Exemption.**

REPORTING COMPANY EXEMPTIONS

23 Listed

Primarily large operating companies (at least 20 employees and 5million revenue) public accounting firms and similar large entities already subject to regulatory reporting such as Sarbanes Oxley.....

--note that family offices will often have less than 20 employees even though revenue exceeds the 5 million level

Dormant entities – the definition has NOT been expanded – if the entity was in existence as of the passage of the CTA, has had any ownership change within 12 months, has sent, or received at least \$1000 in funds in the last 12 months OR has ANY assets, it is NOT an exempt dormant entity.....so shelf entities sitting with a nominal bank account are Reporting Companies. FinCen declined to narrow, or more specifically describe, the “12 month” period – **which would seem to foreclose the concept of terminating a dormant entity in 2022 and eliminate the terminated entity from being a Reporting Company.**

BENEFICIAL OWNER EXEMPTIONS

Minor Children

Nominees, Intermediaries, Custodians, Agents

Employees (**FINAL RULE SPECIFIES THAT SENIOR OFFICERS DO NOT ONLY ACT IN THEIR POSITION AS EMPLOYEES AND ARE NOT EXEMPT INDIVIDUALS**)

Inheritance

Creditors

NOTES AND THOUGHTS:

SUBPOENA ACCESS TO BOI REPORTS?

Access to the information is to be limited to authorized law enforcement/government entities BUT remember, someone will be generating these reports and, presumably, maintaining a copy in some form – this now becomes another document subject to discovery, whether by Subpoena or otherwise, in a suit. **IS THERE A MANNER TO HAVE THESE REPORTS GENERATED PURSUANT TO A PRIVILEGE (SIMILAR TO AN ATTORNEY ENGAGING A CPA RATHER THAN THE CLIENT DIRECTLY ENGAGING THE CPA)?**

IS AN ASSIGNEE (NOT ACCEPTED AS AN EQUITY MEMBER) A BENEFICIAL OWNER?

IS A SPOUSE WITH A COMMUNITY PROPERTY INTEREST A BENEFICIAL OWNER?

NOTICES/OA PROVISIONS?

What notice are you providing to clients? Jan 1, 2024 will get here quickly.

What needs to be included in an engagement agreement to address CTA reporting obligations?

What provisions need to be in an Operating Agreement or Shareholders Agreement to require members to provide the entity, via its manager or Partnership Representative, BOI sufficient to report? To REQUIRE the MANAGER/PARTNERSHIP REPRESENTATIVE to assemble data and cause BOI Report to be filed? Penalty provisions for Members who fail to provide information? Penalty resulting from Member non-compliance deemed a capital call to that Member? Dilution/Forfeiture?

DEPENDS ON WHO YOU REPRESENT...