



Proposed Owner Disclosure Rules Will Affect Your Business

In an effort to combat money laundering and tax evasion by multiple foreign business magnates and oligarchs across the globe, the Financial Crimes Enforcement Network (“FinCEN”) has proposed a rule that would implement the Beneficial Ownership Information (“BOI”) reporting provisions of the Corporate Transparency Act (“CTA”). Although the intended purpose of the rule is narrow, the potential scope would have major implications across the United States.

The proposed rule would require certain business entities, defined as “Reporting Companies,” to file disclosures with FinCEN identifying the beneficial owners and the company applicants of the entity.

Reporting Companies

The proposed rule identifies Reporting Companies as domestic or foreign entities, including corporations, limited liability companies, limited partnerships and other entities created or registered by filing documents with the secretary of state or a similar office.

Beneficial Owners and Company Applicants

Under the proposed rule, a beneficial owner would include an individual who holds at least a 25 percent ownership interest in the Reporting Company, or an individual who exercises substantial control over the Reporting Company. FinCEN goes on to provide a few examples that would be considered exercising substantial control, such as serving as a senior officer, authority to appoint and remove senior officers or a majority of the board of directors, and other forms of control. FinCEN acknowledges the broad reach this provision may have but calls it “crucial” to combatting international money laundering and terrorism.

Additionally, the proposed rule would require reporting of individuals who served as company applicants for the Reporting Company. A company applicant would be defined as any individual who files the formation documents of the entity or directs or controls such filings.

Required Information and Time to Report

The required reports must contain information on both the Reporting Company and the beneficial owners and company applicants. Under the Rule, Reporting Companies would be required to identify themselves by disclosing (1) the entities full name, (2) any trade or DBA name, (3) the entity’s street address, (4) State or country (if foreign) of formation, and (5) the entities Taxpayer Identification Number (“TIN”). Additionally, the Reporting Company would be required to identify each beneficial owner and company applicant by disclosing the individual’s (1) legal name, (2) date of birth, (3) current address (company applicants acting in the course of

their employment may use the employer's address), (4) a unique identification number from a passport, state driver's license, or other government-issued identification document, and (5) an image of the document. Under the proposed rule, Reporting Companies created before the effective date of the Rule would have a year to file the report while Reporting Companies created after the effective date would only have 14 days from its formation to file.

What's next?

FinCEN closed the comment period for the Rule in February of 2022 and is in the process of addressing the concerns of those who participated. There is much uncertainty as to what the next steps in the process will be. It is expected that a final version of the Rule will be published towards the end of 2022, however, there is no word on when the Rule could take effect.

As we await the final version of the Rule, it is important that you as a business owner understand how to proceed moving forward. It is suggested that companies who may be subject to the Rule begin compiling the required information so that when the time comes to file the report, your business will be prepared.

How does this affect my business?

Unless you are a sole proprietorship or a general partnership (and hopefully you are not either of those or we haven't done our job very well), you will be required to disclose to the federal government the information described above for anyone that owns more than a 25% interest or exercises substantial control over the company, including senior officers. For limited liability companies, this would likely include anyone that serves as a manager and for corporations, it would likely include anyone serving on the board of directors.

For more information, please contact [Patrick Hayes](#). *Written with assistance by Andrew Kidda.*