

New Guidance on the Beneficial Ownership Information Reporting Rule

Corporate News: A Legal Update

By John D'Jock and Karen Tobin on April 3, 2023

The U.S. Department of the Treasury's Financial Crimes Enforcement Network (FinCEN) published its guidance materials on March 24, 2023, to help companies understand the requirements of the Beneficial Ownership Information Reporting Rule, which will become effective on January 1, 2024. The rule was implemented under the Corporate Transparency Act to assist regulators in combatting crime and fraud.

This new regulation requires many corporations, limited liability companies, and other entities (both domestic and foreign) that are created or registered to do business in the United States to report information about their beneficial owners. Many companies that were, or will be, created by filing documentation with a secretary of state's office, or an equivalent office, will be required to follow the new regulation ("Reporting Companies"). Exemptions apply for certain large entities, inactive entities, tax exempt entities, financial and securities institutions, and their respective subsidiaries.

A beneficial owner of a Reporting Company is an individual that, directly or indirectly, exercises substantial control over the company or owns or controls at least 25% of the company's ownership interests. To exercise substantial control, the individual must (A) serve as a senior officer of the company, (B) have authority over the appointment or removal of any senior officer or a majority of the Board, or (C) direct, determine, or have substantial influence over important decisions made by the Reporting Company.

Beneficial Ownership Information reported to the U.S. government will not be publicly available. Those that will have access to Beneficial Ownership Information include: federal agencies engaged in national security, intelligence, and civil or criminal law enforcement; the Department of the Treasury in connection with official duties, including tax administration; state and local law enforcement agencies in connection with criminal or civil investigations; and financial institutions for purposes of fulfilling Department of the Treasury legal requirements.

An individual who is a beneficial owner will need to provide information including legal name, birthdate, address, and an identifying number such as a passport or driver's license, including images of the documents showing that information. This obligation is ongoing, so any changes in Beneficial Ownership Information will need to be reported as well.

The beneficial owner of any Reporting Company formed on or after January 1, 2024, will also need to report the same information for any Company Applicant, which includes any individual that filed documentation to create the Reporting Company or directed or controlled that filing. A business address, rather than residential address, may be used if the Company Applicant filed the documentation as part of their business practice. This information only needs to be filed once, with the initial filing.

The Reporting Company must also provide information including its full name, any trade names, its street address, its state of formation (or, if a foreign entity, the state in which it first registered to do business), and an IRS Taxpayer Identification Number (or similar number if the Reporting Company does not have a Taxpayer Identification Number).

Reporting Companies must file Beneficial Ownership Information Reports online at the FinCEN website beginning on 1.1.2024. Any business formed prior to 1.1.2024 has until 1.1.2025 to file its report. Any business formed on or after 1.1.2024 has thirty days after its date of formation to file the report.

For additional guidance, including an informational video, please see the FinCEN website.

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