

FinCEN Guts Corporate Transparency Act; Narrows Scope to Cover Only Foreign Companies and Beneficial Owners

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On March 21, 2025, the Financial Crimes Enforcement Network (FinCEN) issued an interim final rule (IFR) that **materially** alters the Corporate Transparency Act's (CTA) reporting requirements. Consistent with FinCEN's March 2, 2025 announcement (discussed here), the IFR exempts U.S. companies and persons from the CTA's requirements, thereby relieving millions of businesses of the significant compliance burden associated with preparing and filing beneficial ownership information (BOI) reports. In fact, using FinCEN's own estimates, the IFR decreases the number of reporting companies from roughly 32 million to just under 12,000.

Summary of the Interim Final Rule

First, the IFR exempts domestic reporting companies and their beneficial owners from the CTA reporting requirements by narrowing the statutory definition of "reporting company" to include only entities formed under foreign laws that are registered to do business in at least one U.S. state or tribal jurisdiction.

Second, the IFR exempts foreign reporting companies from reporting BOI for any beneficial owners that are U.S. persons (including both U.S. citizens and residents) – once again, altering the statutory definition. Rather, the IFR limits the CTA reporting obligations for foreign companies solely to any beneficial owners that are non-U.S. persons. Accordingly, U.S. beneficial owners – whether they own 25% or more of the ownership interests of the foreign company, or exercise "substantial control" over it – are also excluded from the reporting regime.

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Finally, the IFR adds a special rule that requires foreign pooled investment vehicles (PIVs) to report BOI for non-U.S. persons who exercise “substantial control” over the entity. However, if there are multiple individuals with substantial control, the PIV need only report the non-U.S. person with the greatest authority over the strategic management of the entity.[1]

In addition to these materially substantive changes to the reporting requirements, FinCEN revised the filing deadlines. Specifically:

- A foreign reporting company that registered to do business before the publication date of the IFR will have 30 calendar days from that publication date to file its initial BOI report.[2]
- A foreign reporting company that registered to do business after the publication date of the IFR will have 30 calendar days from the date in which it received notice that its registration is effective to file an initial BOI.

FinCEN is currently accepting public comments through May 25, 2025[3] on the IFR, which it plans to incorporate into a final rule later this year.

Legal Implications

By exempting all domestic companies from the CTA’s reporting regime, FinCEN has effectively rewritten key provisions of the statute. Although the Treasury Department has authority to add exemptions for any “class of entities” for which the collection of BOI “would not serve the public interest” or “would not be highly useful in national security, intelligence, and law enforcement agency efforts to detect, prevent, or prosecute” financial crimes, it is hard to see how collecting BOI from domestic companies fits this standard. In fact, while FinCEN explains “that foreign reporting companies present heightened national security and illicit finance risks[,]” it makes no finding that collecting BOI from domestic companies would be against the public interest or not be useful in combating financial crime.

Furthermore, although the rule is a short-term win for domestic businesses (who are now exempt from all CTA reporting requirements), questions remain. Did FinCEN have the legal authority to modify a statute in this manner? What will happen to the CTA-related litigation that is ongoing in several federal courts? Will Congress pass new legislation (or modify the existing CTA) in light of these developments?

For now, companies that had been preparing to file BOI reports can stand down, but they should continue to monitor legal, legislative, and regulatory developments that may further impact their CTA obligations.

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[1] The CTA statute previously exempted qualified PIVs from the CTA reporting requirements, without regard to whether the beneficial owners were U.S. or non-U.S. individuals. 31 USC §5336(a)(11)(B)(xviii).

[2] FinCEN has announced that the IFR will be published in the Federal Register on March 26, 2025, which means the deadline for companies registered before March 26, 2025 will be April 25, 2025.

[3] That is, 60 days from the March 26, 2025 publication date for the IFR in the *Federal Register*.