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PRESENTACIÓN

Regla Final Sobre el Reporte de Beneficiarios Finales a FinCEN: Retos en su Implementación

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FinCEN's Final Rule Implementing BOI Reporting

- January 1, 2021 – the Corporate Transparency Act (the “CTA”), part of the Anti-Money Laundering Act of 2020, is enacted into law over presidential veto
- Establishes a beneficial ownership information (“BOI”) reporting regime for the **vast majority of privately held** corporations, limited liability companies and other similar entities created in, or registered to do business in, any of the states in the United States (collectively, “Reporting Companies”)
- September 30, 2022 – FinCEN publishes a final rule that implements the ultimate BOI reporting requirements of the CTA (the “BOI Reporting Rule”)
- January 1, 2024 – the BOI Reporting Rule becomes effective
- January 1, 2024 – FinCEN brings online its beneficial ownership secure system (the BOI E-Filing System) and begins accepting BOI reports

BOI Reporting – Which Companies are Subject to Reporting Requirements?

- FinCEN’s BOI Reporting Rule imposes BOI reporting requirements on **Reporting Companies**.
- “Reporting Company” is defined as a **corporation, limited liability company, or other entity** that is:
 - created by the **filing of a document** with a **secretary of state** (including a statutory trust) or any similar office **under the law of a State** or Indian tribe; or
 - organized under the law of a **foreign country and registered to do business in any State** or tribal jurisdiction in the United States by the filing of a document with a secretary of state or any similar office.
- “State” is defined as any state of the U.S., the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of Northern Mariana Islands, American Samoa, Guam, the U.S. Virgin Islands, **and any other commonwealth, territory, or possession** of the U.S.

BOI Reporting – What Must Be Reported?

- Each Reporting Company must identify its “**beneficial owners**” – natural persons – by providing their:
 - full legal name;
 - date of birth;
 - current residential street address; and
 - unique identifying number and the issuing jurisdiction from one of the following documents (including an image of such document): (i) non-expired passport; (ii) non-expired identification document issued by a State, local government, or Indian tribe; (iii) non-expired U.S. driver’s license; or (iv) if the individual does not have any of the above-mentioned documents, a non-expired passport issued by a foreign government; **or**
 - **in lieu of all the above**, a “FinCEN identifier” – a unique identifying number assigned by FinCEN.
- Additionally, each Reporting Company incorporated, formed or registered in the United States on or after January 1, 2024 must report up to two (2) “**company applicants**”.

BOI Reporting – Who is a Beneficial Owner?

- FinCEN’s BOI Reporting Rule defines a “**beneficial owner**,” with respect to a Reporting Company, as any and every individual (*i.e.*, at least one individual, but possibly several or even dozens of individuals) who, **directly or indirectly**, through **any contract, arrangement, understanding, relationship or otherwise**:
 - exercises “**substantial control**” over the Reporting Company; **or**
 - owns or controls 25% or more of the “**ownership interests**” of such Reporting Company.
- An individual exercises “substantial control” over a Reporting Company if the individual:
 - serves a **senior officer** of the Reporting Company (*e.g.*, president, CEO, COO, CFO, GC and any other officer who performs a similar function regardless of title);
 - has **authority over the appointment or removal of any senior officer or a majority of the board**; or
 - directs, determines, or has **substantial influence over important decisions** made by the Reporting Company (*i.e.*, sale or other transfer of principal assets, reorganization, dissolution, merger, major expenditures or investments, issuances of equity, incurrence of significant debt, approval of operating budget, selection or termination of business lines or JVs or geographic focus, compensation and incentive programs for senior officers, entering in or terminating significant contracts, amendments of any charter documents).

BOI Reporting – Exempt Entities

The CTA **exempts 23 classes of entities** that are not considered Reporting Companies. Many of these are entities that are either closely regulated or already required to report their beneficial owners.

- 1) **Large operating companies** – taxable entities with (i) **21 or more full-time employees in the United States**, (ii) an **operating presence at a physical office in the United States**, and (iii) U.S. federal income tax returns from the previous year demonstrating **\$5 million or more in gross receipts or sales** (including income or sales by other entities that are: (a) owned by such entity; and (b) through which such entity operates).
- 2) **Subsidiaries of exempt entities** – any entity whose ownership interests are **entirely controlled or wholly owned**, directly or indirectly, by one or more exempt entities, **but not** subsidiaries of (i) dormant entities, (ii) FinCEN-registered money services businesses, (iii) pooled investment vehicles, and (iv) entities assisting a tax-exempt entity.
- 3) **Dormant entities** – entities that: (i) existed on or before January 1, 2020; (ii) are not engaged in active business; (iii) are not owned by a foreign person (directly/indirectly, wholly/partially); (iv) have not experienced a change in ownership in the preceding 12 months; (v) have not sent or received any funds in an amount greater than \$1,000, either directly or through any financial account in which the entity or any affiliate of the entity had an interest, in the preceding 12-month period; and (vi) **does not otherwise hold any kind or type of assets**, whether in the U.S. or abroad, including any ownership interest in any corporation, limited liability company, or other similar entity.

Exempt Entities (cont'd)

Highly Regulated Entities* (including publicly traded entities):

- 4) Banks
- 5) State or Federal credit unions
- 6) Bank holding companies
- 7) FinCEN-registered money services businesses
- 8) Brokers or dealers
- 9) Securities reporting issuers
- 10) Securities exchanges or clearing agencies
- 11) Other Exchange Act registered entities
- 12) Investment companies
- 13) Insurance companies
- 14) Insurance producers
- 15) Registered entities, or futures commission merchants, introducing brokers, swap dealers, major swap participants, commodity pool operators, or commodity trading advisers or retail foreign exchange dealers registered with the Commodity Futures Trading Commission under the Commodity Act
- 16) Public accounting firms
- 17) Public utility providers of telecommunications services, electrical power, natural gas, or water and sewer services within the U.S.

* Refer to FinCEN's BOI Reporting Rule for a full description of the requirements needed to satisfy these exemptions.

Exempt Entities (cont'd)

18) **Pooled investment vehicles** – entities that are operated **or** advised by any of the following:

- a bank;
 - a federal or state credit union;
 - an SEC-registered broker or dealer;
 - an SEC-registered investment company, an SEC-registered investment adviser; or
 - an investment adviser, as indicated on its SEC Form ADV, that relies on the venture capital fund adviser exemption.
- For this purpose, a "pooled investment vehicle" must satisfy (1) or (2) below:
 - (1) any investment company, as defined in section 3(a) of the Investment Company Act (i.e., a mutual fund); or
 - (2) any company that:
 - (a) would be an investment company but for the exclusion in paragraph (1) of section 3(c) of the Investment Company Act (i.e., outstanding securities owned by up to 100 investors) or paragraph (7) of section 3(c) of the Investment Act (i.e., outstanding securities owned by qualified purchasers); and
 - (b) is identified by its legal name by the applicable investment adviser in its Form ADV filed with the SEC.
- Note the following are not covered by this exemption:
 - Pooled investment vehicles operated or advised by *exempt reporting advisers* (i.e., un-registered adviser managing less than \$150M assets under management); and
 - Any company that would be an investment company but for the exclusion in paragraph (5) of section 3(c) of the Investment Company Act (i.e., real estate funds)

Exempt Entities (cont'd)

Tax-Exempt Entities:

19) Tax-exempt organizations described in section 501(c) of the Internal Revenue Code of 1986

20) Tax-exempt political organizations under section 527(e)(1) of the IRS Code (e.g., a political party, committee, or association)

21) Trusts described in paragraph (1) or (2) of section 4947(a) of the IRS Code (e.g., trusts that have only charitable interests)

Exempt Entities (cont'd)

Entities Assisting Tax-Exempt Entities:

22) Any corporation, limited liability company or other similar entity that:

- operates exclusively to provide financial assistance to, or hold governance rights over, any 501(c) tax-exempt entity, a tax-exempt political organization, or a charitable trust;
- is formed in the U.S.;
- is beneficially owned or controlled exclusively by one or more U.S. persons that are U.S. citizens or lawfully admitted for permanent residence; and
- derives at least a majority of its funding or revenue from one or more U.S. persons that are U.S. citizens or lawfully admitted for permanent residence.

Other Entities:

23) Entities that are established under the laws of the U.S., an Indian tribe, a State, or a political subdivision of a State, or under an interstate compact between two or more States and exercise governmental authority on behalf of the U.S. or any such Indian tribe, State, or political subdivision.

Catch-all Authority: Any additional entities that FinCEN may determine should be exempt on an ongoing basis.

Screen-Shots of FinCEN's BOI Report

Filing Information Reporting Company Company Applicant(s) Beneficial Owner(s) Submit

Filing Information

ⓘ Need help? ▾

*1. Type of filing:

- a. Initial report
- b. Correct prior report
- c. Update prior report
- d. Newly exempt entity

2. Date prepared (auto-filled)

01/18/2024

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Screen-Shots of FinCEN's BOI Report

- Filing Information
- Reporting Company**
- Company Applicant(s)
- Beneficial Owner(s)
- Submit

Part I. Reporting Company Information

Need help?

- 3. Request to receive FinCEN ID
- 4. Foreign pooled investment vehicle

Legal name and alternate name(s)

Need help?

*5. Reporting Company legal name

6. Alternate name (e.g. trade name, DBA)

Add Alternate Name

Form of identification

Need help?

*7. Tax Identification type

*8. Tax Identification number

9. Country/Jurisdiction (if foreign tax ID only)

Jurisdiction of formation or first registration

Need help?

*10. a. Country/Jurisdiction of formation

Current U.S. address

Need help?

*11. Address (number, street, and apt. or suite no.)

*12. City

*13. U.S. or U.S. Territory

*14. State

*15. ZIP code

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Screen-Shots of FinCEN's BOI Report

Filing Information | Reporting Company | **Company Applicant(s)** | Beneficial Owner(s) | Submit

Need help?

16. Existing reporting company (check if existing reporting company as of January 1, 2024)

17. (This item is reserved for future use)

Part II. Company Applicant Information [Add Company Applicant](#)

Need help?

Company Applicant #1

Company applicant FinCEN ID

Need help?

18. FinCEN ID

Legal name and date of birth

Need help?

*19. Individual's last name *20. First name

21. Middle name 22. Suffix *23. Date of birth

Current address

Need help?

*24. Address type
 Business Address Residential Address

*25. Address (number, street, and apt. or suite no.) *26. City

*27. Country/Jurisdiction *28. State *29. ZIP/Foreign postal code

Form of identification and issuing jurisdiction

Need help?

*30. Identifying document type

*31. Identifying document number

*32. Identifying document issuing jurisdiction

a. Country/Jurisdiction

b. State

c. Local/Tribal

d. Other local/Tribal description

*33. Identifying document image

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Screen-Shots of FinCEN's BOI Report

Filing Information Reporting Company Company Applicant(s) **Beneficial Owner(s)** Submit

Part III. Beneficial Owner Information [Add Beneficial Owner](#)

Need help?

Beneficial Owner #1

Need help?

35. Parent/Guardian information instead of minor child
(check if the Beneficial Owner is a minor child and the parent/guardian information is provided instead)

Beneficial Owner FinCEN ID

Need help?

36. FinCEN ID

Exempt entity

Need help?

37. Exempt entity

Legal name and date of birth

Need help?

*38. Individual's last name or entity's legal name *39. First name

40. Middle name 41. Suffix *42. Date of birth

Residential address

Need help?

*43. Address (number, street, and apt. or suite no.) *44. City

*45. Country/Jurisdiction *46. State *47. ZIP/Foreign postal code

Form of identification and issuing jurisdiction

Need help?

*48. Identifying document type *49. Identifying document number

*50. Identifying document issuing jurisdiction

a. Country/Jurisdiction b. State

c. Local/Tribal d. Other local/Tribal description

*51. Identifying document image

Drag file here or [choose from folder](#)

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Screen-Shots of FinCEN's BOI Report

Filing Information Reporting Company Company Applicant(s) Beneficial Owner(s) Submit

*Email

*Confirm Email


*First Name

*Last Name

***I certify that I am authorized to file this BOIR on behalf of the reporting company. I further certify, on behalf of the reporting company, that the information contained in this BOIR is true, correct, and complete.**

I agree

COMPLIANCE REMINDER: The willful failure to report complete beneficial ownership information to FinCEN, the willful failure to update beneficial ownership information provided to FinCEN when previously reported information changes, or the willful provision of false or fraudulent beneficial ownership information to FinCEN, may result in civil or criminal penalties. A person may also be subject to civil or criminal penalties for willfully causing a reporting company to report incomplete or false beneficial ownership information to FinCEN.

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Submit BOIR

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Compliance Dates for Initial BOI Reports

DUE WITHIN 90 CALENDAR DAYS OF CREATION OR REGISTRATION

- Domestic Reporting Companies incorporated or formed anytime between January 1, 2024 and December 31, 2024
- Foreign Reporting Companies registered anytime between January 1, 2024 and December 31, 2024

DUE BY JANUARY 1, 2025

- Domestic Reporting Companies incorporated or formed before January 1, 2024
- Foreign Reporting Companies registered before January 1, 2024

DUE WITHIN 30 CALENDAR DAYS OF CREATION OR REGISTRATION

- Domestic Reporting Companies incorporated or formed on or after January 1, 2025
- Foreign Reporting Companies registered on or after January 1, 2025

DUE WITHIN 30 CALENDAR DAYS OF LOSING EXEMPTION

- Entities that no longer meet the criteria for any exemption must file an initial BOI report

**Exempt entities are not required to file initial BOI reports, since they are exempt from the definition of "Reporting Company."*

BOI – Will BOI Be Disclosed to the Public?

- The CTA identifies BOI collected pursuant to the CTA as confidential, subject to disclosure **only in limited circumstances**.
- BOI reports submitted to FinCEN will be stored and maintained solely with FinCEN and will not be made publicly available nor made generally available to the States.
- The CTA expressly provides that BOI collected by FinCEN **may only be used for:**
 - Facilitating national security, intelligence, and law enforcement activities; and
 - Confirming BOI provided to financial institutions to facilitate AML compliance, **with the consent of the Reporting Company**.
- The CTA requires FinCEN to maintain BOI in a secure, nonpublic database, using information security methods and techniques appropriate to protect non-classified information systems at the highest security level; and to take all steps (including auditing) to ensure that government authorities access the information only for authorized purposes consistent with the CTA.

Access Rule – Retention of BOI and Permissible Disclosure

- December 21, 2023 – FinCEN publishes a final rule that implements the BOI access and information security provisions requirements of the CTA (the “Access Rule”)
- February 20, 2024 – the Access Rule becomes effective

Access Rule – Retention of BOI and Permissible Recipients

- FinCEN will hold all BOI reported for **no less than 5 years** after the date on which the Reporting Company is terminated or dissolved.
- FinCEN may, upon request, disclose BOI to:
 - a **federal agency** engaged in **national security, intelligence, or other law enforcement activity, for use in furtherance of such activity;**
 - a **State, local, or Tribal law enforcement agency**, *if a court of competent jurisdiction, including an officer of such court, has authorized the law enforcement agency to seek the information in a criminal or civil investigation;*

Access Rule – Permissible Recipients (cont'd)

- a **federal agency** responding to (i) *a law enforcement agency, prosecutor, or judge of a foreign country under an international treaty, agreement, convention* (collectively, “Treaty”), or (ii) *an official request made by law enforcement, judicial, or prosecutorial authorities in trusted foreign countries when no there is no Treaty* (disclosure in either case must comply with provisions of applicable Treaty or limit its use for any purpose other than the authorized investigation, or national security or intelligence activity);
- a request made by a **Federal functional regulator** or other appropriate regulatory agency if the agency is expressly authorized to receive such information under the CTA, uses the information *solely to assess a financial institution’s compliance with CDD Rule requirements*, and enters into an agreement with the Secretary of the Treasury providing for appropriate protocols governing the safekeeping of the information; or
- a **financial institution subject to customer due diligence requirements**, with the **consent of the Reporting Company**, to facilitate the CDD Rule compliance.

Access Rule – Permissible Recipients (cont'd)

- BOI will be accessible for inspection or disclosure **to officers and employees of the U.S. Department of the Treasury** whose official duties require such inspection or disclosure.
- **Private Bankers – Take Note**: Officers and employees of the Department of the Treasury may obtain access to BOI “**for tax administration purposes.**”

So, What Do My Regulators Think About the CTA???

Interagency Statement for Banks on the Issuance of the Access Rule (Dec. 21, 2023)

- “The Access Rule **does not create a new regulatory requirement** for banks to access BOI from the BO IT System or a supervisory expectation that they do so.”
- “Therefore, the Access Rule **does not necessitate changes to Bank Secrecy Act (BSA)/anti-money laundering (AML) compliance programs** designed to comply with the ***existing*** Customer Due Diligence rule (the “current CDD Rule”) and other existing BSA requirements, such as customer identification program requirements and suspicious activity reporting.”
- “However, **any access to and use of BOI obtained from the BO IT System must comply with the requirements of the CTA and the Access Rule.**”

Interagency Statement for Banks on the Issuance of the Access Rule (cont'd)

- “A third rule, which has not yet been proposed, will revise the current CDD Rule” implemented in 2016.
- “In particular, the CTA directs FinCEN to revise the current CDD Rule to: (i) bring it into conformity with the AML Act of 2020, including the CTA; (ii) **account for financial institutions’ access to BOI reported to FinCEN so financial institutions may confirm BOI provided directly to them for the purpose of facilitating their compliance with AML, countering the financing of terrorism, and customer due diligence requirements;** and (iii) reduce any burdens on financial institutions and legal entity customers that are, in light of the CTA, unnecessary or duplicative.”

Proposed for Comment: Annual Hourly Burden Associated with the Access Rule

ACTION	TYPE OF ENTITY	NUMBER OF ENTITIES	HOURS PER ENTITY
A. Develop and implement administrative and physical safeguards.	Financial Institutions	15,716	240 in Year 1; 0 in Years 2+
C. Develop and implement technical safeguards.	Financial Institutions	15,716	0 in Year 1; 0 in Years 2+
F. Obtain and document customer consent.	Financial Institutions	15,716	70 in Year 1; 20 in Years 2+
G. Submit certification for each request that it meets certain requirements.	Financial Institutions	15,716	94 in Year 1; 94 in Years 2+
H. Undergo training.	Financial Institutions	15,716	8 in Year 1; 8 in Years 2+
L. Comply with certain geographic restrictions.	Financial Institutions	15,716	0 in Year 1; 0 in Years 2+
M. Notify FinCEN of information demand from foreign government.	Financial Institutions	15,716	0 in Year 1; 0 in Years 2+

What's Next?

- The third CTA-mandated rulemaking requires FinCEN to revise portions of the CDD Rule within one year after the effective date of the BOI Reporting Rule (*i.e.*, by January 1, 2025) to, among other things:
 - bring the CDD Rule into conformity with the AML Act as a whole, including the CTA;
 - account for financial institutions' access to BOI reported to FinCEN in order to confirm the BOI provided directly to the financial institutions for AML/CFT and customer due diligence purposes; **and**
 - reduce any burdens on financial institutions and legal entity customers that are unnecessary or duplicative considering the CTA.

QUESTIONS?



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