

# New Federal Law to Create Reporting Requirements for Most U.S. Entities

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Many entities across the United States are about to have increased reporting requirements starting January 1, 2024. After a long anticipated wait, FinCEN, the Financial Crimes Enforcement Network, issued a final rule on the [Beneficial Ownership Information Reporting Requirement](#). The rule sets out requirements for entities that are considered to have beneficial ownership information (“BOI”) and will increase the reporting requirements for most entities across the country. This reporting requirement will be in addition to the general filing that occurs with the Secretary of State or State Tax offices.

The final rule was created by FinCEN based on the authority granted to them in the Corporate Transparency Act (“CTA”). The CTA aims to prevent money laundering, tax fraud, and other illegal activity (particularly with regard to foreign investment in the U.S.) by requiring each business entity to report basic identifying information and certain details about individuals with ownership and control. Each entity will have to provide the necessary information using an online portal created by the FinCEN called the Beneficial Ownership Secure System (“BOSS”). These reports will not be made public, but they will be accessible to law enforcement and some other governmental agencies, as well as banks to work in conjunction with Know Your Client (“KYC”) procedures. Failure to comply with the CTA’s reporting requirements could lead to significant fines, or even imprisonment.

## Required Reporters

There are two categories of required reporters: entities and individuals.

The types of entities that are required to report are domestic reporting companies and foreign reporting companies. Domestic Reporting Companies are considered (1) corporations, (2) limited liability companies, and (3) “any other entity that is created by the filing of a document with a secretary of state or any similar office under the law of a State or Indian tribe.” This third catch-all provision is likely to include limited liability partnerships and business trusts among other entities. Foreign Reporting Companies are considered to be (1) corporations, (2) limited liability companies, or (3) any other entity that is “formed under the law of a foreign country; and registered to do business in any State or tribal jurisdiction by the filing of a document with a secretary of state or any similar office under the law of a State or Indian tribe.”

While the entities that are required to report are quite broad, the final rule does carve out 23 exempt entities, who will have no reporting requirement under this new rule. Some of the major exempt entities are:

- Banks
- Credit Unions
- Tax-Exempt Entities
- SEC Reporting Entities/Issuers

- Venture Capital Fund Advisers
- Large Operating Companies: These are companies with (i) more than 20 full-time employees in the United States, (ii) a physical office location in the United States, (iii) and a filed federal income tax or information return that shows more than \$5 million in gross receipts or sales

For individuals, beneficial owner(s) and company applicant information must also be reported to FinCEN. Beneficial owners are those who directly or indirectly exercise substantial control over a reporting company or own/control at least 25% ownership interest in the company. Substantial control is broadly defined to include: senior officers, those who have authority over appointment or removal of senior officers or a majority of directors, and those who have substantial influence over the company to include just a few. As for ownership interests, FinCEN considers equity, capital, profit, and convertible interests in their calculation of 25% ownership and control. Therefore, there will always be at least one beneficial owner, but unlike similar rules, *all* beneficial owners will be required to report.

As for company applicants of a reporting company, the individual who directly files the document that creates a domestic reporting company, as well as the individual who is primarily responsible for directing or controlling such filing, must also report to FinCEN.

### **Information to be Reported**

Reporting Companies have a duty to report:

- Full Legal Entity Name
- Any Trade Names or d/b/a names, even if not registered
- Principle Place of Business
- Jurisdiction of Formation
- Tax Identification Number (TIN)

Beneficial Owners and Company Applicants must report:

- Full Legal Name
- Date of Birth
- Current Residential Address
- Unique identifying number from a passport, drivers license, or state ID
- Image of Document showing unique Identifying number

### **Timeline**

For entities that have been formed or registered before January 1, 2024, reporting of company information and beneficial owner information must occur to FinCEN before January 1, 2025.

For entities that are formed or registered after January 1, 2024, the entity must report within 90 days of receiving notice from the Secretary of State's office that the entity's creation or registration has become effective.

## Conclusion

There are serious penalties, including fines and jail time, for a lack of compliance. Roetzel's Corporate, Tax, and Transactional team is available to assist entities and their owners in determining if you or your entity is required to report and ensuring compliance.

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