

FinCEN's Beneficial Ownership Reporting Rule Takes Effect January 1, 2024: Recap and Recent Developments

December 1, 2023

Effective January 1, 2024, the Corporate Transparency Act (the "CTA") and implementing regulations adopted by the U.S. Treasury Department's Financial Crimes Enforcement Network ("FinCEN") will require certain entities created or registered to do business in the United States to disclose personal information about their beneficial owners, senior officers and other control persons to the federal government.

Entities created or registered to do business in the United States in 2024 must report beneficial ownership information to FinCEN within 90 days of their creation or registration to do business, unless an exemption is available. Entities created or registered to do business on or after January 1, 2025 must file initial reports within 30 days of creation or registration.

There is no grandfathering for entities created or registered to do business before the January 1, 2024 effective date. Initial reports for such entities that are in scope for the reporting requirement are due by January 1, 2025.

With the beneficial ownership reporting regime taking effect in only four weeks, we describe below the current status of FinCEN's CTA implementation efforts and provide links to in-depth summaries and other resources.

Final Reporting Rule. The CTA requires FinCEN to undertake three primary rulemakings to implement the beneficial ownership reporting regime: (i) a reporting rule specifying who must report beneficial ownership information to FinCEN, what information must be reported and when reports are due; (ii) an access rule establishing the circumstances under which certain stakeholders may access beneficial ownership information maintained by FinCEN; and (iii) revisions to the customer due diligence ("CDD") requirements for financial institutions to bring these requirements into conformance with the CTA.

FinCEN finalized the first of these rulemakings on September 30, 2022. This [final rule](#) (the "Final Reporting Rule") establishes which entities must report beneficial ownership information to FinCEN, what information must be reported and when reports are due.

The Final Reporting Rule also describes the various exemptions from the reporting requirement. Our client update on the Final Reporting Rule is available [here](#).

As noted above, the Final Reporting Rule takes effect **January 1, 2024**. Initial reporting deadlines depend on the date of an entity's creation or registration to do business in the United States. Following a November 30, 2023 [amendment](#) to the Final Reporting Rule, those deadlines are as follows:

Date of Creation or Registration	Initial Report Deadline
Before January 1, 2024	January 1, 2025
January 1, 2024 – December 31, 2024	Within 90 days of notice of creation or registration
On or after January 1, 2025	Within 30 days of notice of creation or registration

Beneficial ownership information filings must then be updated if a change in reported information occurs or if a reporting company becomes aware of (or has reason to know of) an error. Updated reports are due within 30 days of when a change occurs or an error is discovered.

FinCEN has provided some guidance on its beneficial ownership information [website](#) on the reporting obligation and exemptions from reporting that may be available. The guidance provided to date includes an introduction to beneficial ownership information reporting brochure, a small entity compliance guide and frequently asked questions.

However, many questions remain, including with respect to the application of available exemptions and the identification of individuals required to be reported due to their exercise of “substantial control” over a reporting company. Debevoise joined with three other leading law firms earlier this year to address common questions in the private funds industry related to the new beneficial ownership reporting regime. That guidance is available [here](#).

Proposed Access Rule. The CTA requires FinCEN to maintain reported beneficial ownership information in a secure, non-public database for use, under varying conditions, by national security, intelligence and law enforcement agencies, federal functional regulators and financial institutions.

On December 16, 2022, FinCEN issued a proposed rule to (1) establish the circumstances in which certain governmental entities and financial institutions may access beneficial ownership information reported to FinCEN and (2) specify related data protection protocols and oversight mechanisms. FinCEN's final rule on these matters is pending review with the Office of Information and Regulatory Affairs within the Office

of Management and Budget (“OMB”) in the Executive Office of the President and is expected to be finalized soon. Our client update on the proposed access rule is available [here](#).

FinCEN Identifiers. As discussed in previous client updates, FinCEN will issue a unique identifying number (“FinCEN ID”) to an individual or entity following submission of specified information to FinCEN.

- **Individual FinCEN IDs.** The Final Reporting Rule established the rules for use of an individual’s FinCEN ID, which can be provided to a reporting company in place of the individual’s personal information that would otherwise need to be reported. Obtaining a FinCEN ID may ease compliance and reduce data security risks with respect to individuals who are beneficial owners or company applicants (as described in the Final Reporting Rule) of numerous entities by allowing those individuals to submit personal information directly to FinCEN rather than providing it to one or more reporting companies.
- **Entity FinCEN IDs.** A [rule](#) published on November 8, 2023, specifies when and how a reporting company may use an entity’s FinCEN ID to report ownership information of related entities. In particular, the November 8, 2023 rule provides that a reporting company may report another entity’s FinCEN ID and full legal name in lieu of the required information for beneficial owners of the reporting company *if*: (i) the other entity has obtained a FinCEN ID and provided that FinCEN ID to the reporting company; (ii) an individual is or may be (based on the reporting company’s good faith belief) a beneficial owner of the reporting company by virtue of an interest in the reporting company that the individual holds through an ownership interest in the other entity; and (iii) the beneficial owners of the other entity and of the reporting company are the same individuals.

FinCEN explained its understanding that use of an entity’s FinCEN ID would best satisfy the CTA’s statutory scheme in which reporting an intermediate entity’s FinCEN ID would be equivalent to reporting the beneficial ownership information of the reporting company’s beneficial owners only if the two entities in fact have the same beneficial owners. FinCEN clarified in the preamble to the November 8, 2023 rule that a reporting company must file an update with FinCEN and can no longer report another entity’s FinCEN ID if at any time the reportable beneficial owners of either the reporting company or the entity whose FinCEN ID was reported change such that the two are no longer identical.

As with companies required to file beneficial ownership reports, persons obtaining a FinCEN ID must update or correct any information previously submitted to FinCEN

within 30 days of when a change in reported information occurs or the person becomes aware of (or has reason to know of) an error in such information.

Beneficial Ownership Information Report and FinCEN Identifier Application for Individuals. On September 29, 2023, FinCEN submitted to OMB for review and clearance (i) the [beneficial ownership information report](#) that reporting companies will use to provide beneficial ownership information to FinCEN and (ii) the [application](#) that individuals may use to obtain FinCEN IDs. Entities may request to receive FinCEN IDs through the beneficial ownership information report.

It appears that OMB approved these forms without change on November 27, 2023, and FinCEN should therefore release final versions soon. Beneficial ownership information reports and FinCEN ID applications will be filed with FinCEN electronically beginning January 1, 2024. FinCEN will not accept any filings before this date.

Revisions to CDD Requirements for Financial Institutions. In addition to the reporting and access rules described above, the CTA requires the U.S. Treasury Secretary to revise the 2018 CDD rule for financial institutions generally to bring it into conformance with the beneficial ownership reporting regime. The expectation is that this revision of the CDD rule will reduce unnecessary and duplicative burdens on financial institutions and legal entities.

The CTA requires the CDD rule to be revised not later than one year after the effective date of FinCEN's regulations implementing the beneficial ownership reporting regime (*i.e.*, by January 1, 2025). This revision to the CDD rule, which FinCEN has not yet proposed, will be subject to public notice and comment before it is finalized.

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Please do not hesitate to contact us with any questions.



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