Fact Sheet: Beneficial Ownership Information Reporting Notice of Proposed Rulemaking (NPRM)

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Millions of corporations, limited liability companies, and other entities are formed within the United States each year. While such entities play an essential and legitimate role in the U.S. and global economies, they can also be used to facilitate illicit activity, such as corruption, and enable those who threaten U.S. national security to access and transact in the U.S. economy. Few jurisdictions in the United States require legal entities to disclose information about their beneficial owners—that is, the people who actually own or control a company—or the persons forming them. This creates opportunities for corrupt actors, criminals, and terrorists to remain anonymous while facilitating illicit activity through legal entities in the United States.

Corruption, in particular, allows bad actors to abuse their authority and extract unfair gains at the expense of others. Treasury's strategy to combat corruption will make our economy—and the global economy—stronger, fairer, and safer from criminals and national security threats. As part of a whole-of-government commitment to democracy, Treasury is taking a number of actions to fight corruption and prevent it from undermining trust in democratic institutions. Among these actions is the implementation of the Corporate Transparency Act (CTA), which was enacted as part of the Anti-Money Laundering Act of 2020 within the National Defense Authorization Act for Fiscal Year 2021.

Today, FinCEN issued a Notice of Proposed Rulemaking (https://www.federalregister.gov/public-inspection/2021-26548/beneficial-ownership-information-reporting-requirements) to give the public an opportunity to review and comment on the proposed rule to implement the CTA's beneficial ownership information (BOI) reporting provisions. The proposed rule would significantly enhance the ability to protect the U.S. financial system from illicit use, and provide essential information to law enforcement and others help prevent corrupt actors, terrorists, and proliferators from hiding money or other property in the United States.

In developing the proposed regulation, FinCEN has also aimed to minimize burdens on reporting companies, including small businesses. It is anticipated to cost reporting companies less than $50 apiece to prepare and submit an initial BOI report. In comparison, the state formation fee for creating a limited liability company (LLC) can cost between $40 and $500, depending on the state.

Requiring entities to submit beneficial ownership information to FinCEN and providing timely access to this information to law enforcement, financial institutions, and other authorized users is intended to help combat corruption, money laundering, terrorist financing, tax fraud, and other illicit activity.

The ultimate goal of this regulatory proposal is to combat, to the broadest extent possible, the proliferation of anonymous shell companies that facilitate the flow and sheltering of illicit money in the United States.

Key Elements of the Proposed Beneficial Ownership Information Reporting Regulation

The Notice of Proposed Rulemaking would help stop bad actors from using legal entities to hide illicit funds behind anonymous shell companies or other opaque corporate structures.

The proposed rule describes who must file a BOI report, what information must be reported, and when a report is due. Specifically, the proposed rule would require reporting companies to file reports with FinCEN that identify two categories of individuals: (1) the beneficial owners of the entity; and (2) individuals who have filed an application with specified governmental or tribal authorities to form the entity or register it to do business.

Reporting Companies

- The proposed rule identifies two types of **reporting companies**: domestic and foreign. A domestic reporting company would include a corporation, limited liability company, or any other entity created by the filing of a document with a secretary of state or similar office under the law of a state or Indian tribe. A foreign reporting company would include a corporation, limited liability company, or other entity formed under the law of a foreign country and that is registered to do business in any state or tribal jurisdiction. Under the proposed rule and in keeping with the CTA, twenty-three types of entities would be exempt from the definition of "reporting company."
- FinCEN expects that these definitions would include limited liability partnerships, limited liability limited partnerships, business trusts, and most limited partnerships, in addition to corporations and LLCs, because such entities appear typically to be created by a filing with a secretary of state or similar office.
- Other types of legal entities, including certain trusts, would appear to be excluded from the definitions to the extent that they are not created by the filing of a document with a secretary of state or similar office. FinCEN recognizes that the creation of many trusts does not involve the filing of such a formation document. The NPRM, however, seeks public comment on state and Indian Tribe law practices regarding trust formation to better understand and define the scope of the rule.

Beneficial Owners

- Under the proposed rule, a **beneficial owner** would include any individual who (1) exercises substantial control over a reporting company, or (2) owns or controls at least 25 percent of the ownership interests of a reporting company. The proposed regulation defines the terms "substantial control" and "ownership interest" and sets forth standards for determining whether an individual owns or controls 25 percent of the ownership interests of a reporting company. In keeping with the CTA, the proposed rule exempts five types of individuals from the definition of "beneficial owner."
- In defining the contours of who has "**substantial control**," the proposed rule sets forth a range of activities that could constitute "substantial control" of a company. This list would capture anyone who is able to make significant decisions on behalf of the entity. FinCEN's approach is designed to close loopholes that would allow corporate structuring that obscures owners or decision-makers. This is crucial to unmasking shell companies.

Company Applicants

- In the case of a domestic reporting company, the proposed rule defines a **company applicant** to be the individual who files the document that forms the entity. In the case of a foreign reporting company, a company applicant would be the individual who files the document that first registers the entity to do business in the United States.
- In both cases, the proposed regulation specifies that anyone who directs or controls the filing of the relevant document by another would also be a company applicant.

Beneficial Ownership Information Reports

- When filing **BOI reports** with FinCEN, the proposed rule would require a reporting company to identify itself and report four pieces of information about each of its beneficial owners and company applicants: name, birthdate, address, and a unique identifying number from an acceptable identification document (and the image of such document).

- If an individual provides his or her BOI to FinCEN, the individual can obtain a "FinCEN identifier," which can then be provided to FinCEN in lieu of other required information about the individual.
- The proposed regulations also include a voluntary mechanism to allow reporting of the Taxpayer Identification Number (TIN) for a beneficial owner or company applicant.

Timing

- Under the proposed rule, BOI report **timing** would depend on (1) when a reporting company was created or registered, and (2) whether the report at issue is an initial report, an updated report providing new information, or a report correcting erroneous information in a previous report.
- Domestic reporting companies created before the effective date of the final regulation would have a year to file their initial reports; reporting companies created or registered after the effective date would have 14 days after their formation to file. The same deadlines would apply to existing and newly registered foreign reporting companies.
- Reporting companies would have 30 days to file updates to their previously filed reports, and 14 days to correct inaccurate reports after they discover or should have discovered the reported information is inaccurate.

Next Steps

- The comment period for the NPRM is open for sixty days until February 7, 2022.
- The BOI reporting NPRM is one of three rulemakings planned to implement the CTA. FinCEN will engage in additional rulemakings to (1) establish rules for who may access BOI, for what purposes, and what safeguards will be required to ensure that the information is secured and protected; and (2) revise FinCEN's customer due diligence rule following the promulgation of the BOI reporting final rule.
- In addition, FinCEN is developing the infrastructure to administer these requirements, such as the beneficial ownership information technology system.
