

THE FINANCIAL CRIMES ENFORCEMENT NETWORK ISSUED THE FINAL RULE

November 21, 2022

The Financial Crimes Enforcement Network (FinCEN) recently issued the Final Rule^[1] under the Corporate Transparency Act (CTA)^[2] requiring businesses organized or registered in the U.S. to submit reports about their owners to the U.S. government. In short, the Final Rule requires “reporting companies” to submit reports that identify their owners into FinCEN’s Beneficial Ownership Secure System (BOSS) database, which federal agencies (and state, local, and foreign law enforcement agencies, in certain circumstances) will be able to access and use for national security, intelligence and law enforcement purposes.

Who is affected? The Final Rule applies to all “reporting companies,” “beneficial owners,” and “applicants.” “Reporting companies” include most (i) corporations, LLCs, and other entities created by filing a document with a secretary of state or similar office of a U.S. state or Indian tribe and (ii) non-U.S. entities registered to do business in the U.S. A “beneficial owner” is an individual who substantially controls or owns 25% or more of the equity interests in a reporting company. An “applicant” is anyone who makes a filing to create or register a reporting company.

What information is reported? In their reports, each (i) reporting company must disclose its name, organizational details, and tax ID numbers, and (ii) beneficial owner and applicant must disclose his/her name, birthday, address, government-issued ID number, and a copy of his/her ID.

Exemptions. The Final Rule includes 23 exemptions for companies that would otherwise qualify as reporting companies. One key exemption is for “large operating companies,” which include companies that (i) have more than 20 full-time employees in the U.S., (ii) have a physical office in the U.S., and (iii) reported more than \$5M in gross receipts or sales in its prior-year U.S. tax return. The CTA also exempts “inactive entities,” “pooled investment vehicles,” investment companies and investment advisers registered with the

SEC, banks and credit unions, tax-exempt entities, brokers-dealers, and wholly-owned subsidiaries of exempt entities.

Effective Date. The Final Rule goes into effect on January 1, 2024. Reporting companies formed or registered before the effective date must report by January 1, 2025. Going forward, every reporting company must file a report within 30 days after formation or registration.

Penalties. The CTA includes stiff civil and criminal penalties for violations. For example, a willful violation of the reporting requirements can lead to civil liability of \$500 per day until remedied and/or criminal penalties of up to two years imprisonment and up to \$10,000 in fines.

Please contact any of the attorneys in Bell Nunnally's Corporate and M&A Group if you have any questions about how the CTA affects or applies to you or your business.

[1] FinCEN's BOI reporting rule fact sheet can be found here: <https://www.fincen.gov/beneficial-ownership-information-reporting-rule-fact-sheet>.

[2] The text of the Corporate Transparency Act can be found here: <https://www.congress.gov/bill/116th-congress/house-bill/2513/text>.

Related Practices

Corporate and Securities

Entertainment, Advertising and Media

Immigration

Mergers and Acquisitions