

FinCEN Publishes Beneficial Ownership Information Reporting Rule

By Daniel C. McKay, James W. Morrissey, James M. Kane, Jennifer D. King, Juan M. Arciniegas, Mark C. Svalina and Mary Donohue

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On September 30, 2022, the Financial Crimes Enforcement Network (“FinCEN”) published the final Beneficial Ownership Information Reporting Rule (the “Final Rule”), codifying much of a proposal published in December of 2021 (the “Proposed Rule”). The Final Rule largely tracks the Proposed Rule, covered [here](#), but with modifications in response to comments from the public. We have summarized the key differences below.

Background

The Corporate Transparency Act (the “Act”) was codified on January 1, 2021 and directed FinCEN to develop standardized reporting, maintenance, and disclosure rules relating to beneficial ownership information for closely held businesses, regardless of the type of enterprise (e.g., corporation, limited liability company or partnership).

In accordance with the Act, FinCEN will become responsible for beneficial owner information collection and verification for companies subject to the Act, which has previously been the responsibility of financial institutions.

What’s in the Final Rule?

Unless an exemption applies, the Final Rule applies to all corporations, limited liability companies, state partnerships or similar entities that are either created by a filing with a secretary of state or similar office of any U.S. state or formed under the law of a foreign country and registered to do business in the U.S. In particular, the Final Rule requires companies to report directly to FinCEN the identities of all company “beneficial owners.” A “beneficial owner” being defined as any natural person(s) holding at least 25 percent (25%) of a company’s equity interests or who otherwise has substantial control over a company.

Unless a reporting exemption applies, the below identified reporting responsibilities will apply.

- All companies formed or registered to do business in the U.S. **after** January 1, 2024 must report the identities of company applicant(s) and beneficial owners to FinCEN. Such companies will have thirty (30) days after formation or registration to report their company applicant(s) and beneficial owners.
- All companies formed and registered to do business **prior to or on** January 1, 2024, only need to identify their beneficial owners. Such companies will have until January 1, 2025 to report their current beneficial owner.

A list of reporting exemptions can be found by clicking [here](#).

What Does this Mean for Banks?

Currently certain financial institutions are required under the Customer Due Diligence Rule (“CDD Rule”) to identify and verify the identity of beneficial owners of legal entity customers when opening accounts. Prior to the CDD Rule, FinCEN’s regulations required a financial institution to develop a customer identification and verification process, and conduct ongoing monitoring for reporting suspicious transactions. With the issuance of the Final Rule, FinCEN will be offloading the responsibility of the beneficial ownership information collection and verification from financial institutions to FinCEN. However, until FinCEN revises its regulations issued under the CDD Rule, which it must do within one year of the effective date of the Final Rule (January 1, 2025), financial institutions must continue under the current framework.

What are the Differences Between the Proposed Rule and Final Rule?

The Final Rule differs from the Proposed Rule in a few key ways, summarized below.

| | Proposed Rule | Final Rule |
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| Reports and Company Information | <ul style="list-style-type: none"> Under the Proposed Rule, companies would have been required to report the following information to FinCEN: <ul style="list-style-type: none"> Full name of reporting company, as well as any trade names Business street address of reporting company State or jurisdiction of formation Taxpayer identification number Report would include each beneficial owners' full name, address, and a unique number from a passport, driver's license, or state-issued ID, as well as a picture from such identification | <ul style="list-style-type: none"> The Final Rule made some clarifications to the specific information that must be provided. The Final Rule clarified the company must provide: <ul style="list-style-type: none"> Full "legal name" and all trade names, whether or not registered Address of principal place of business Jurisdiction of formation, for domestic and foreign reporting companies The Final Rule clarifies that: (i) reporting companies provide full legal names for company applicants and beneficial owners; (ii) for reporting companies with their headquarters in the US, companies should provide the street address of their headquarters; and (iii) reporting companies are not to use their tax identification numbers for beneficial owners and company applicants. |
| Special Rule for Ownership by Exempt Entity | <p>The Proposed Rule provided that if a company that is exempt from reporting requirements has, or will have, a direct or indirect ownership interest in a reporting company and an individual is a beneficial owner of the exempt entity, the report shall only include the name of the exempt entity and not include the information with respect to the individual owner of the exempt entity.</p> | <p>The Final Rule provides that this special reporting rule applies only if the individual is a beneficial owner of a reporting company "exclusively" by virtue of the individual's ownership interest in an exempt entity(ies). Also, the Final Rule makes the use of this special reporting rule optional, rather than mandatory.</p> |
| Certification of Accuracy | <p>The Proposed Rule required reporting companies to certify that reports are "accurate and complete."</p> | <p>The Final Rule includes the certification that the reported information is "<u>true</u>, correct and complete."</p> |
| Certification Number | <p>The Proposed Rule allowed for a Tax Identification Number, or where a company has not yet been issued one, a Dunn & Bradstreet Number or a Legal Entity Identifier.</p> | <p>The Final Rule requires companies to submit a TIN and removes alternative options.</p> |
| Updated and Corrected Reports | <ul style="list-style-type: none"> <i>Updated Reports</i> – Under the Proposed Rule, companies would have thirty (30) calendar days to report changes to information previously reported to FinCEN. | <ul style="list-style-type: none"> <i>Updated Reports</i> – Unchanged <i>Corrected Reports</i> – The Final Rule requires reporting companies to file a report to correct inaccurate information within thirty (30) calendar days of learning or having reason to know of such |

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| | <ul style="list-style-type: none"> <i>Corrected Reports</i> – The Proposed Rule also required reporting companies to file a report to correct inaccurate information within fourteen (14) calendar days of learning or having reason to know of such inaccuracies. | inaccuracies. |
| <p>Creditor Exception to Beneficial Owner Definition</p> | <p>The Proposed Rule included five exceptions to the definition of beneficial owner, including an exception for creditor.</p> | <p>The Final Rule modifies the regulatory language to clarify that an individual would qualify for the “creditor” exception, and thus would not be considered a beneficial owner, based on the individual’s entitlement to payment of a reporting company’s indebtedness, even if there are loan covenants or other similar obligations associated with that indebtedness intended to secure repayment. This change reflects FinCEN’s view that the overarching intent of the Act was to exclude from the definition of beneficial owner an individual whose sole interest in a reporting company is as a creditor.</p> |

The full text of the Final Rule can be found [here](#).

If you would like to discuss the matters addressed in this bulletin, please contact Daniel C. McKay, II at dmckay@vedderprice.com, James W. Morrissey at jmorrissey@vedderprice.com, James M. Kane at +1 (312) 609 7533, Jennifer D. King at jking@vedderprice.com, Juan M. Arciniegas at jarciniegas@vedderprice.com, Mark C. Svalina at msvalina@vedderprice.com, Mary Donohue at mdonohue@vedderprice.com or any Vedder Price attorney with whom you have worked.

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