

CTA Significantly Amended by Interim Final Rule

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On March 21, the Financial Crimes Enforcement Network (FinCEN) submitted an interim final rule (IFR) to the *Federal Register*, regarding the beneficial ownership information (BOI) reporting requirements under the Corporate Transparency Act (CTA). The IFR indicates that it takes effect immediately upon publication in the *Federal Register*, which is anticipated to occur on March 26.

The IFR provides that upon its effectiveness:

- Entities that previously met the definition of a nonexempt “domestic reporting company” will be exempt from BOI reporting requirements; and
- Entities formed under the law of a foreign country and registered to do business in any U.S. state or Tribal jurisdiction by filing a document with a secretary of state or similar office (formerly known as “foreign reporting companies”) will continue to be subject to the BOI reporting requirements (subject to certain modifications in the IFR) unless an exemption applies.

In issuing the IFR, FinCEN acknowledges that the BOI reporting requirements impose burdens on businesses and that the goal of collecting information while minimizing burdens is a “delicate balance.” It noted that the change in presidential administrations has “resulted in a reassessment of the balance struck by the reporting rule” and that the secretary of the Department of Treasury has “assessed that exempting [domestic entities] would ensure that the Reporting Rule is appropriately tailored to advance the public interest, considering the burdens imposed by the regulations without sufficient benefits.” FinCEN stated that this determination is consistent with the “direction of the President” pursuant to Executive Order 14192, *Unleashing Prosperity Through Deregulation*, and that it received written concurrences from the attorney general and the secretary of homeland security regarding the IFR.

What Changed?

The following is a summary of some of the IFR’s key changes to the rules previously implemented under the CTA:

Prior CTA Provision	IFR Amendment

reporting companies were subject to the BOI reporting obligations unless an exemption to reporting applied.

	(regardless of whether they are U.S. persons or foreign persons) are exempt from the BOI reporting obligations.
<p>There were defined “reporting companies” from the BOI reporting obligations. Both “domestic reporting companies” and “foreign reporting companies.”</p> <p>Thus, both domestic reporting companies and foreign</p>	<p>The definition of a reporting company has been revised to include entities with the U.S. formed or organized as a foreign reporting company, including a new exemption for the U.S. “domestic entity” from the BOI reporting obligations. “Domestic entity” is defined as the prior definition of a “domestic reporting company” (any entity that is a corporation, limited liability company, or other entity and was 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).</p>
<p>Foreign reporting companies were required to file initial BOI reports based on the date that they first registered to do business in the U.S.</p> <p>After the CTA-related litigation, the deadlines were:</p> <ul style="list-style-type: none"> • March 21, 2025, for entities first registered prior to February 19, 2025. • Within 30 days of notice of such registration for entities registered on or after February 19, 2025. <p>After an initial report was filed, updated reports were required within 30 days of applicable changes.</p>	<p>Upon the publication of the IFR in the <i>Federal Register</i>:</p> <ul style="list-style-type: none"> • [Foreign] reporting companies registered to do business in the U.S. must file BOI reports no later than 30 days from the date of publication of the IFR; and • [Foreign] reporting companies registered to do business on or after the publication date of the IFR have 30 days to file an initial BOI report after receiving notice that their registration is effective.
Foreign reporting companies were required to report the BOI of all of their “beneficial owners” as defined in the CTA.	Foreign reporting companies are only required to report the BOI of beneficial owners who are non-U.S. persons.
U.S. persons were required to provide their BOI with respect to any nonexempt reporting company for which they were a beneficial owner.	U.S. persons are not required to provide their BOI with respect to any nonexempt reporting company for which they are a beneficial owner.
A foreign reporting company that meets the pooled investment vehicle exemption and no other exemptions must report the BOI of the individual who exercises substantial control over the entity. If multiple individuals exercise substantial control, the company must report the BOI of the person who has the greatest authority over the strategic management of the entity.	A foreign reporting company that meets the pooled investment vehicle exemption and no other exemptions must report the BOI of the individual who is a non-U.S. person and exercises substantial control over the entity (if any). If multiple non-U.S. persons exercise substantial control, the company must report the BOI of the non-U.S. person who has the greatest authority over the strategic management of the entity.

Domestic Reporting Companies Are Now Exempt

Companies that were previously subject to the BOI reporting requirements because they met the definition of a “domestic reporting company” and did not meet one of the previous 23 exemptions are now exempt pursuant to a new, 24th exemption. This new exemption exempts “domestic companies” from BOI reporting requirements and is available to any entity that was 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 (e.g., a “domestic reporting company” as defined prior to the IFR), regardless of the citizenship or jurisdiction of its beneficial owners.

As a result of the IFR, domestic companies no longer need to file initial BOI reports, and they have no obligation to update or correct any previously filed reports.

The secretary of the Department of Treasury created this new exemption on the basis that reporting by “domestic entities” would not serve the public interest and would not be highly useful in security, intelligence, and law enforcement efforts.

Changes Applicable to Foreign Companies

In contrast to domestic entities, FinCEN noted that foreign entities “present heightened national security and illicit finance risks and different concerns about regulatory burdens,” and as a result, “exempting foreign companies would not serve the public interest.” The IFR makes several changes to the CTA that impact foreign companies.

Definition of “Reporting Company”

First, the IFR revised the definition of “reporting company” in the CTA to include only companies that were previously defined as “foreign reporting companies.” As a result, “reporting company” now means any entity that is (a) a corporation, limited liability company, or other entity, (b) formed under the law of a foreign country; and (c) 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 that state or Indian tribe.

Therefore, foreign companies that meet this definition will continue to be subject to the CTA and the BOI reporting obligations unless an exemption applies. The IFR extends the deadline for initial reports to the later of 30 days after the date the IFR is published or 30 days after notice of a company’s registration to do business in the U.S. The IFR does not provide for a transition period for compliance so 30-day filing deadline is a hard deadline.

BOI of US Persons

The IFR provides that a reporting company and any U.S. person who is a beneficial owner of that reporting company are exempt from providing the BOI of such U.S. person as a beneficial owner. In other words, reporting companies are only required to report company information and the BOI of company applicants and foreign owners, and U.S. persons are under no obligation to report their BOI as beneficial owners pursuant to the CTA.

Foreign Pooled Investment Vehicles

The IFR revises the special reporting rule applicable to foreign reporting companies who are exempt from BOI reporting solely because they meet the pooled investment vehicle exemption. Under the revised special reporting

rule, foreign pooled investment vehicles must report the BOI of the individual who has substantial control over the entity if the individual is not a U.S. person. Where multiple individuals have substantial control over the foreign pooled investment vehicle and at least one of those individuals is not a U.S. person, such entity must report the individual with the greatest authority over the strategic management of the entity who is not a U.S. person. If there is no individual with substantial control who is not a U.S. person, the foreign pooled investment vehicle is not required to report any beneficial owners.

The IFR changes this requirement such that the BOI of a US person is not required under this special reporting rule.

Effectiveness of IFR

FinCEN stated that there is “good cause” for making the IFR effective immediately upon publication in the *Federal Register* because it “grants or recognizes an exemption or relieves a restriction” rather than imposing new burdens. For the same reason, FinCEN noted that prior notice and public comment are “unnecessary,” though public comment will be solicited after publication, and FinCEN intends to issue a final rule later this year. It is unclear whether the IFR and its limiting of the applicability of the CTA will be subject to challenge or revised as part of the public comment period. As such, we advise that (i) clients should continue to monitor for any updates to the IFR or its effectiveness and (ii) entities that were formed under the law of a foreign country and that have registered to do business in any U.S. state or Tribal jurisdiction by the filing of a document with a secretary of state or similar office (formerly known as “foreign reporting companies”) should move forward with completing any remaining information gathering and prepare to file a BOI report prior to the deadline published in the IFR.

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