

Locke Lord QuickStudy: FinCEN Adopts Final Regulations Under ?Corporate Transparency Act?

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The material set forth below was developed before the 2024 and 2025 district court injunctions regarding the CTA (which were subsequently stayed and continue to be litigated). As a result, the material set forth below, including filing deadlines, may not be current. Please consult FinCEN's [website](#) for the latest filing due dates and other information regarding the CTA and its requirements.

Final regulations were adopted on September 29, 2022 by the Financial Crimes Enforcement Network ("FinCEN") of the U.S. Department of Treasury (the "[Beneficial Ownership Rule](#)" or the "[Rule](#)") under the Corporate Transparency Act (the "CTA"). The regulations are effective on January 1, 2024. Filings will be required to be made electronically once the required registry and additional new regulations concerning the registry are in place. Civil and criminal fines and penalties are prescribed for a failure to comply or for willfully providing false information to FinCEN.

Beginning on January 1, 2024, most newly formed businesses, and many existing entities, will be required to file reports with FinCEN under the CTA. The CTA is part of the Anti-Money Laundering Act of 2020, which was part of the 2021 National Defense Authorization Act.^[1] Reporting companies created or registered before January 1, 2024 will have one year to file their initial reports. Reporting companies created or registered after January 1, 2024, will have 30 days to file their initial reports. Early filings are not currently permitted. The Rule requires updating and correcting beneficial ownership information within 30 days from the date of the change or identification of an error.

The Rule primarily focuses on identifying beneficial ownership and control of start-ups, small ?businesses, shell companies and other entities with limited or no operations. The CTA lists, and the ?Rule does not expand, the a list of excepted entities, such as publicly-traded companies, accounting ?firms, entities in a regulated industry (where beneficial ownership reporting already occurs), nonprofit ?organizations and domestic government entities. As contemplated by the CTA, the Rule provides an ?exemption for an entity that (i) has more than 20 full-time employees in the United States, and (ii) has ?filed in the previous year a federal income tax return reporting more than \$5 million of gross receipts, ?and (iii) has an operating presence at a physical location in the United States.?

FinCEN will be issuing additional regulations establishing the registry, how filings are to be made, who will have access to the registry, forms and procedures for filing and how the non-public, secure central registry is to be administered by FinCEN to track beneficial ownership. These new regulations will include whistleblower protective provisions and changes to existing FinCEN regulations under the Bank Secrecy Act including those mandated by the CTA covering records relating to dealings in antiquities by dealers, galleries and others involved in the art and

antiquities trade.

Each reporting company directly and through a “company applicant”, must report to FinCEN specified information about itself and each of its beneficial owners, company applicants and control persons. However, the Rule does not require reporting companies existing or registered before January 1, 2024 to go back to provide personal information concerning their company applicants.

The definition of “beneficial owner” is expansive and includes both individuals generally understood to be in control of an entity (officers, directors, managers of LLCs, general partners and others owning 25% or more of the equity or voting rights of the enterprise) as well as persons who otherwise exercise control. Careful analysis of the Rule will be necessary to identify the “control” trigger for beneficial ownership filings for complex ownership and “control” structures or when new equity is issued or options, grants or convertible securities or debt are issued or contractual control over the entity occurs. It is important to note that under the Rule, an individual can be considered a beneficial owner even without holding an actual ownership interest in the reporting company.

After the effective date of the Rule, a “company applicant” has a reporting obligation, as does the reporting company. A company applicant is defined as any individual who files an application to form or register the reporting company on or after January 1, 2024. The Rule applies a functional definition to the term “company applicant” to mean (i) the individual who directly files the document that creates the entity or, in the case of a foreign reporting company, the document that first registers the entity to do business in the United States, and (ii) the individual who is primarily responsible for directing or controlling the filing of the relevant document by another. While the Rule does not specifically identify accountants, attorneys and their staffs as “applicants,” in the accompanying release FinCEN makes clear that these persons may be “company applicants” for reporting purposes.

In a fact sheet released with the [Beneficial Ownership Rule](#), FinCEN stated that it will develop compliance and guidance documents to assist reporting companies in complying with the Rule and will issue a Small Entity Compliance Guide to inform small entities about their responsibilities under the Rule.

[1] The CTA is Title LXIV, Section 6401 et seq. of the NDAA, and adds Section 5336 to Title 31 of the United States Code.

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