

# Locke Lord QuickStudy: FinCEN Issues Notice of Proposed Rulemaking Under Corporate Transparency Act

Locke Lord LLP

## WRITTEN BY

Barry J. Bendes

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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.*

On December 7, 2021, the Financial Crimes Enforcement Network (“FinCEN”) issued a [Notice of Proposed Rulemaking \(“NPRM”\) under the Corporate Transparency Act \(the “CTA”\).](#) The CTA went into effect January 2, 2020 and required that regulations under the CTA be promulgated by the end of 2021. The period for comments relating to the NPRM ends on February 7, 2022.

FinCEN’s NPRM focuses primarily on the beneficial ownership reporting requirements of the CTA. Once regulations are effective, many existing United States and foreign entities with a presence in the U.S. will be required to report their beneficial ownership (defined to include 25% owners and control persons) to FinCEN.

Recognizing the statutory exemptions from the filing obligations under the CTA, the NPRM clarifies a number of ambiguities in the CTA as to who must make the filings, when filings must be made, and which entities are exempt. In this regard, the NPRM requires prompt filing with FinCEN (within 14 days from formation or registration) by persons (called “company applicants”) responsible for the formation of many newly formed corporations, limited liability companies, limited liability partnerships, limited liability limited partnerships, business trusts, many limited partnerships, as well as other similar entities formed or incorporated by a filing with a governmental authority or tribal authority. The 14-day filing requirement will also apply to foreign entities having “an operating presence at a physical office within the United States” first registering in the United States.

Anyone who “directs or controls” the filing of the relevant formation or registration document by another person will also be considered a “company applicant” for this purpose and will have a filing requirement. The NPRM specifically provides that “in many cases, the company applicant may be an employee of a business formation service or law firm, or an associate, agent, or family member who is filing the document on behalf of another individual.”<sup>[1]</sup>

The NPRM also highlights that once the final regulations are effective, entities existing prior to the effective date of the regulations will have “one year from the effective date of the final regulations to file their initial report”<sup>[2]</sup> of

beneficial ownership with FinCEN unless the entities fall within statutory and regulatory exemptions. Reporting companies will have 30 days to file updates to their previously filed reports, and 14 days to correct inaccuracies in filed reports after they discover or should have discovered the errors, omissions or mistakes.

As published in the [Federal Register](#), the NPRM includes an introduction providing an overview of the regulatory initiative and a long and detailed recitation of the proposed regulations. It also foreshadows additional regulations that will be issued by FinCEN or the Department of the Treasury concerning substantive and procedural safeguards concerning the FinCEN beneficial ownership database and who will have access to the FinCEN beneficial ownership database. The NPRM further advises that FinCEN will be issuing regulations necessary to adapt the duties and obligations of financial institutions under the Bank Secrecy Act with regulations issued by FinCEN under the CTA.

To assist covered entities, their owners and advisors to understand the scope and some of the details of the proposed regulations, FinCEN issued a brief fact sheet highlighting what FinCEN calls its “[Key Elements of the Proposed Beneficial Ownership Information Reporting Regulation](#).” Neither the FinCEN fact sheet, which is very brief, nor this QuickStudy can address the many details contained in the proposed regulations. A careful analysis of the NPRM and the final regulations, when issued, will be important for a fuller understanding of the CTA filing requirements and the safeguards to be included in the FinCEN CTA database of beneficial ownership.

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[1] In this regard, FinCEN states: “FinCEN believes that the burden of this reporting requirement is minimal because the identity of any individual that meets the definition of “company applicant”—both the person submitting the report and the person directing it—should be readily available to reporting companies.” FinCEN has encouraged comments on this, and we anticipate that comments similar to those submitted with respect to the Notice of Advance Rule Making discussed in one of our earlier Locke Lord QuickStudies will be submitted from various constituencies.

[2] 86 FR 69920-69921

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