



## NOTICE OF PROPOSED RULEMAKING: BENEFICIAL OWNERSHIP INFORMATION REPORTING

On December 8, 2021, the Financial Crime Enforcement Network (“FinCEN”), a division of the United States Treasury Department, issued a Notice of Proposed Rulemaking for new provisions (“New Rule”) under the Corporate Transparency Act. If passed, this New Rule would require corporations, limited liability companies, partnerships and other entities created by filing a document with a Secretary of State (“Reporting Companies”) to file a Beneficial Ownership Information Report (“BOIR”) with FinCEN.

The BOIR must contain specific information about (1) the Reporting Company, (2) any individual who, directly or indirectly, either exercises substantial control<sup>1</sup> over or controls at least 25% of the interests or shares of such Reporting Company (“Beneficial Owner”) and (3) any individual who files the organization or incorporation documents that register the Reporting Company with a Secretary of State, including any individual who directs or controls the filing of such document (“Company Applicant”).

The BOIR must contain the following information about the Reporting Company:

1. Registered name (including tradenames);
2. Street address;
3. State of formation; and
4. TIN and FEIN:
  - a. If the Reporting Company has not received a TIN, one of the following:
    - i. DUNS number; or
    - ii. Legal Entity Identifier.

The BOIR must contain the following information about every Beneficial Owner and Company Applicant of the Reporting Company:

1. Full legal name;
2. Birthdate;
3. Address:
  - a. For a Company Applicant who serves as a statutory agent, the business address of the Company Applicant’s business; and
  - b. For all others, residential address.
4. A unique identifying number from one of the following identification documents:
  - a. Passport; or

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<sup>1</sup> “Substantial control” means the ability to partake in or influence the entity’s major activities, such as participating on the entity’s Board of Directors, having substantial influence over the entity’s operating budget, or controlling the entity’s majority vote.

- b. Driver's license.
- 5. An image of such identification document provided in #4.

Reporting Companies must file the BOIR within the following timeframes:

1. If the Reporting Company was created before the effective date of the New Rule, within one year of the effective date of the New Rule;
2. If the Reporting Company is formed after the effective date of the New Rule, within 14 days after formation;
3. If the Reporting Company needs to update an existing BOIR, within 30 days; and
4. If the Reporting Company needs to correct mistakes in an existing BOIR, within 14 days after discovery of the mistake.

Though all Reporting Companies are required to submit the BOIR, the following entities are required to report only the Reporting Company's name to FinCEN ("Exempt Entities"):

1. Large operating companies
  - o Employs more than 20 full time employees in the United States; and
  - o Has an operating presence at a physical office within the United States; and
  - o Filed a federal income tax or information return in the United States for the previous year demonstrating more than \$5,000,000 in the gross receipts or sales, as reported as gross receipts or sales (net of returns and allowances) on the entity's IRS Form 1120, consolidated IRS Form 1120, IRS Form 1120-S, IRS Form 1065, or other applicable IRS form, excluding gross receipts or sales from sources outside the United States, as determined under federal income tax principles. For an entity that is part of an affiliated group of corporations within the meaning of 26 U.S.C. 1504 that filed a consolidated return, the applicable amount shall be the amount reported on the consolidated return for such group.
2. SEC reporting issuers
3. Governmental authorities
4. Banks
5. Credit Unions
6. Depository institution holding companies
7. Money transmitting businesses registered with FinCEN
8. Brokers or dealers in securities
9. Securities exchanges or clearing agencies
10. Any other entity registered with the SEC under the Securities Exchange Act of 1934
11. Investment companies and investment advisors
12. Venture capital fund advisers
13. Insurance companies
14. State-licensed insurance producers
15. Commodity Exchange Act registered entities
16. Accounting Firms
17. Public utilities

18. Financial market utilities
19. Pooled investment vehicles
20. Tax-exempt entities under Internal Revenue Code Section 501(a) or 501(c)
21. Entities assisting a tax-exempt entity under Internal Revenue Code Section 501(a) or 501(c)
22. Subsidiaries of certain Exempt Entities
23. Inactive entities
24. Other legal entities, including certain trusts, that are not created by the filing of a document with the Secretary of State

The New Rule is open for public comment until February 7, 2022. Public comments can be made here: <https://www.federalregister.gov/documents/2021/12/08/2021-26548/beneficial-ownership-information-reporting-requirements#open-comment>.