

FinCEN Eliminates CTA Compliance for U.S. Corporate Entities and U.S. Persons – Limiting Compliance to Foreign Reporting Companies

by Erin Bryan, Nathan Honson, Joseph Lynyak, and Matthew Dickerson

On Friday, March 21, 2025, the United States Financial Crimes Enforcement Network (“FinCEN”) issued for publication in the *Federal Register* an “interim final rule” (the “Revised Rule”) that effectively exempts all domestic U.S. corporate entities as well as all “United States persons” from reporting requirements pursuant to the Corporate Transparency Act (the “CTA”) and implementing FinCEN regulations.

What remains are reporting and compliance requirements for what were formerly defined as “foreign reporting companies,” which are now defined as constituting the *only* category of a “reporting company.” In that regard, the Revised Rule states:

(c) *Reporting company.*

(1) *Definition of reporting company.* For purposes of this section, the term “reporting company” means:

(i) [Removed and Reserved]

(ii) Any entity that is:

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.

Importantly, the Final Rule clarifies that not only are the newly defined “reporting companies” (*i.e.*, formerly “foreign reporting companies”) not required to file beneficial ownership information (“BOI”) for a United States person, United States persons are also

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relieved of any obligation to provide BOI to the reporting company.^[1]

It is useful to bear in mind that FinCEN has not had a stellar reputation for either writing clear CTA regulations or providing interpretative guidance that is useful in practice. For example, the Revised Rule appears to indicate that “company applicants” must continue to identify themselves when filing a BOI report for a reporting company. This means that company applicants must continue to identify themselves on a BOI report regardless of location. FinCEN may clarify this and related compliance obligations when it rewrites its FAQs and related guidance.

Because over the past year FinCEN suspended compliance with its BOI regulation, the Revised Rule establishes two time periods for foreign entities that must continue to file BOI reports with FinCEN:

First, for reporting companies (*i.e.*, foreign entities) registered in the U.S. prior to the date the Revised Rule is published in the *Federal Register*, an initial report must be filed within 30 days of that publication date.

Second, for reporting companies receiving actual notice after the date of publication in the *Federal Register* that it has been registered to do business in the United States (or the date on which a secretary of state or similar office first provides public notice that the reporting company has been registered to do business), an initial report must be filed within 30 days of receipt of confirmation of registration.

It appears from a review of the modifications made in the Revised Rule that foreign entities that continue to be subject to the CTA will also be required to file updated reports in accordance with time periods as set forth in the FinCEN regulations (which generally requires that an amended BOI report be filed within 30 days of the foreign entity becoming aware of a change in the accuracy of a previously filed BOI report).

A Possible Compliance Alternative

Because the Revised Rule provides substantially more favorable treatment toward U.S. corporate entities vis-à-vis foreign corporate entities, that favorable treatment may present a strategy for foreign companies to reduce their BOI compliance burden—namely incorporating in the U.S. and running U.S. operations through a U.S. subsidiary. Because the Revised Rule now completely exempts U.S. corporate entities (which previously were not exempt), the use of a U.S. subsidiary to conduct business in the United States (instead of using a foreign entity that files a qualification to do business in the United States) would eliminate any BOI compliance requirements. (This approach is similar to the requirement under the Federal Reserve Board's Regulation K that foreign banking entities organize intermediate holding companies for certain U.S. operations.)

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We will continue to monitor developments in CTA compliance, and welcome questions and comments regarding FinCEN developments, including interpretative guidance issued

by FinCEN.

[1] 31 U.S. Code § 5336(a)(14) defines “United States person” by reference to section 7701(a)(30) of the Internal Revenue Code of 1986, which in turn defines “United States person” to mean “(A) a citizen or resident of the United States, (B) a domestic partnership, (C) a domestic corporation, (D) any estate (other than a foreign estate, within the meaning of paragraph (31)), and (E) any trust if—(i) a court within the United States is able to exercise primary supervision over the administration of the trust, and (ii) one or more United States persons have the authority to control all substantial decisions of the trust.”