

FinCEN Proposes Report and Application to Accompany Beneficial Ownership Reporting Rule

January 30, 2023

The U.S. Treasury Department's Financial Crimes Enforcement Network ("FinCEN") continues to move forward with implementing the requirements of the Corporate Transparency Act, which creates beneficial ownership information reporting obligations for entities created or registered to do business in the United States.

As we previously advised, in September of last year, FinCEN published its [final rule](#) on the mandatory reporting. This regulation sets forth which entities need to report and which benefit from exemptions, when reports are due and what information will be required to be reported. Our client update on the final rule is available [here](#).

More recently, on December 16, 2022, FinCEN issued a [proposed rule](#) governing access to the registry. The proposal addresses who will have access to information contained in the registry and for what purposes access may be obtained. The proposal also discusses data security and other safeguards to be taken by those granted access. The comment period on the proposal is open until February 14, 2023, and we anticipate that many industry participants will offer comments. Our client update on the proposal is [here](#).

On January 17, 2023, FinCEN issued two companion proposals to the final rule. [One](#) is a proposed report to collect beneficial ownership information from reporting companies (the "Beneficial Owner Report"); the [other](#) is a proposed application for those seeking to obtain a "FinCEN identifier," described in more detail below (the "FinCEN Identifier Application"). The comment period for both is open until March 20, 2023.

Beneficial Owner Report

FinCEN's September 2022 rule requires a company obligated to disclose beneficial ownership to file with FinCEN reports that provide information on (1) the reporting company; (2) company applicants; and (3) each individual who is a beneficial owner. If implemented as proposed, the reporting company would supply this information through the Beneficial Owner Report, which is divided into three sections:

- *First*, the reporting company would provide its own information: (i) legal name; (ii) tax identification type and number; (iii) country/jurisdiction of formation; and (iv) current U.S. address.
- *Second*, the reporting company would input information for (up to two) company applicants. If the applicants do not have FinCEN identifiers, the reporting company would include for each: (i) name; (ii) date of birth; (iii) address; and (iv) an image of the identifying document (i.e., state-issued driver's license, state/local/Tribe-issued ID, U.S. passport, foreign passport) along with certain information about such document.
- *Third*, for each beneficial owner, the reporting company must provide the owner's FinCEN identifier or much of the same information required for company applicants (including a residential address and identifying document).

The reporting company would be required to certify that the report is true, correct and complete, update information in the report as needed and correct any previous incorrectly reported information, within specific timeframes. The reports would be filed electronically through an online interface.

FinCEN Identifier Application

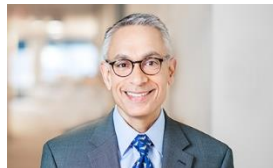
As noted above, company applicants and beneficial owners would be able to provide a FinCEN identifier for a reporting company's use in its Beneficial Owner Report in place of supplying the required information and identifying document. The identifiers should make reporting easier for individuals who frequently serve as company applicants or are beneficial owners of multiple legal entities.

The FinCEN Identifier Application would be used to apply for and receive such an identifier. As might be expected, the FinCEN Identifier Application tracks the information requirements in the Beneficial Owner Report for company applicants and beneficial owners. The individual must also certify that the information furnished is true, correct and complete and submit updates of identifying information as needed.

For reporting companies themselves, a FinCEN identifier could be requested through the proposed Beneficial Owner Report. The FinCEN identifier could be helpful for reporting companies with accounts with financial institutions that access reporting company information through the registry.

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We will continue to monitor developments and provide additional updates as warranted. Please do not hesitate to contact us with any questions.



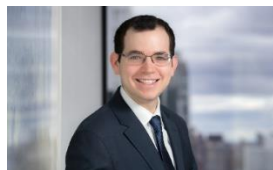
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