# U.S. Entities Must Disclose Ownership Beginning in 2024

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In an effort to help prevent tax fraud and other unlawful financing activities, the Financial Crimes Enforcement Network (FinCEN) has issued final rules related to ownership disclosure obligations for U.S. entities. The final rules will be effective January 1, 2024.

FinCEN may already be known to U.S. persons from the requirement to disclose their financial interest in, or signature authority over, foreign financial accounts through a Report of Foreign Bank and Financial Accounts (FBAR). FBAR is typically filed together with the U.S. tax return of an individual or entity and tax preparers usually assist with the preparation of the report.

With this new rule, FinCEN will extend its reach and require certain entities to provide information about its beneficial owners by filing a Beneficial Ownership Information (BOI) Report if certain requirements are met. The information collected through the BOI report will be accessible to U.S. government departments and agencies, law enforcement, tax authorities, and financial institutions in a centralized database.

One of the main goals for the introduction of the rules is to fight money laundering in the U.S. and promote financial transparency. The new disclosure requirements were mandated under the 2021 Corporate Transparency Act (CTA) and will provide the U.S. with a centralized aggregation of the information about who controls, operates and/or owns private U.S. entities.

## Entities That Must File a BOI Report

Under the rules, the following types of companies would have to comply with the reporting rules and disclose beneficial ownership.

- **Domestic reporting companies:** U.S. corporations, limited liability companies (LLCs), or any other entity created by the filing of formation documents with a state or any similar office under the law of a state or Indian tribe.

- **Foreign reporting companies:** Companies that are formed under the law of a foreign country, treated as a corporation or LLC for U.S. purposes and registered to do business in any state or tribal jurisdiction.

Although not specifically mentioned, limited liability partnerships, limited partnerships and other U.S. legal entities will have to report as all of these are formed by filing documents with authorities in a state or tribal jurisdiction.

There are 23 specific exemptions from the definition of reporting company under the CTA. These include accounting firms, banks, SEC reporting issuers, credit unions, governmental authorities, money transmitting businesses, brokers and dealers, venture capital (VC) funds and other investment advisers. Broadly, those exempt from the reporting rules are those which already have ownership disclosure requirements through other regulatory oversight.

The final rule defines a beneficial owner as any individual who, directly or indirectly,

- Exercises substantial control over a reporting company, or
- Owns or controls at least 25% of the ownership interests of a reporting company.

Substantial control essentially exists if anyone can make important decisions on behalf of an entity. The standards and mechanisms to determine a 25% ownership cover certain scenarios such as holding ownership interests in a trust.

### Information to Be Provided

A reporting company will need to identify itself and disclose the following about the beneficial owners:

- Name
- Birthdate
- Address
- Unique identifying number and issuing jurisdiction from an acceptable identification document (and the image of such document)

An analysis will be required to determine whether an individual or company has authority over a reporting entity. Indirect ownership rules in identifying 25% owners need to be considered when doing the analysis.

Currently, FinCEN has estimated 26 million entities that would meet the definition of a reporting company out of an estimate of 33 million of active businesses in the U.S.

### Reporting Due Dates

- Reporting companies created or registered before January 1, 2024 will have one year (until January 1, 2025) to file their initial reports, while reporting companies created or registered after January 1, 2024 will have 30 days after receiving notice of their creation or registration to file their initial reports.

- Reporting companies have 30 days to report changes to the information in their previously filed reports and must correct inaccurate information in previously filed reports within 30 days of when the reporting company becomes aware, or has reason to know, of the inaccuracy of information in earlier reports.

PKF O'Connor Davies guidance: Investors need to consider the new rules when planning to incorporate an entity in the U.S. or when reorganizing the ownership structure of an already existing U.S. legal entity.

### Contact Us

If you have any questions or need any assistance, please reach out to your client service team or:

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