

NEW B.O.I. REGULATIONS UNDER THE C.T.A. ARE ISSUED BY FINCEN

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INTRODUCTION

On Friday, March 21, 2025, the Financial Crimes Enforcement Network (“FinCEN”) of the Treasury Department published interim final rule to narrow the existing beneficial ownership information (“B.O.I.”) reporting requirements under the Corporate Transparency Act (the “C.T.A.”). Entities previously defined as “domestic reporting companies” are exempted from the reporting requirements and do not have to report B.O.I. to FinCEN, or update or correct B.O.I. previously reported to FinCEN. With limited exceptions, the interim final rule does not change the existing requirement for foreign reporting companies to file B.O.I. reports. However, the deadline to file initial B.O.I. reports, and to update or correct previously filed B.O.I. reports, are extended to 30 days from the date of publication to give foreign reporting companies additional time to comply. Note, however, the interim final rule exempts foreign reporting companies from having to report the B.O.I. of U.S. persons who are beneficial owners and exempts U.S. persons from having to provide such information to foreign reporting companies.

As a service to our readers, particularly those based outside the U.S., below are significant excerpts from the preamble of the FinCEN interim regulations with footnotes deleted.

EXCERPTS FROM THE PREAMBLE TO THE REGULATIONS

Supplementary Information

Background

On January 1, 2021, Congress enacted into law the C.T.A. as part of the broader Anti-Money Laundering Act of 2020. Section 6403 of the C.T.A., among other things, amends the Bank Secrecy Act (BSA) by adding a new section 5336, Beneficial Ownership Information Reporting Requirements, to subchapter II of chapter 53 of title 31, United States Code. This section established new B.O.I. reporting requirements for many corporations, limited liability companies, and other similar entities operating in the United States. The C.T.A. excludes from that general definition, however, specified categories of businesses. The C.T.A. also authorizes the Secretary of the Treasury (Secretary) to exempt any other “entity or class of entities” for which the Secretary, with the written concurrence of the Attorney General and the Secretary of Homeland Security, has, by regulation, determined that “requiring beneficial ownership information from the entity or class of entities . . . would not serve the public interest” and “would not be highly useful in national security, intelligence, and law enforcement agency efforts to detect, prevent, or prosecute money laundering, the

financing of terrorism, proliferation finance, serious tax fraud, or other crimes.” In addition, section 5318(a)(7) of the BSA provides that the Secretary may make appropriate exemptions from a requirement in the BSA or regulations prescribed under the BSA. Taken together, these provisions authorize the issuance of regulations that may provide additional exemptions from the requirements of the C.T.A..

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Section 1010.380 previously required domestic reporting companies and foreign reporting companies created or registered to do business in the United States before the rule's effective date of January 1, 2024, to file initial B.O.I. reports with FinCEN by January 1, 2025, one year after the effective date of the regulations. Domestic reporting companies created in 2024 and those foreign reporting companies registered to do business in the United States in 2024 had 90 days to file their initial B.O.I. reports with FinCEN. Starting on January 1, 2025, section 1010.380 provided all reporting companies created or registered on or after that date with 30 days to file their initial reports.

The January 1, 2025, deadline previously established in FinCEN's regulations has changed in light of litigation challenging the C.T.A.. In two cases, district courts issued universal orders that preliminarily enjoined FinCEN from implementing and enforcing the C.T.A. and the Reporting Rule or stayed the effective date of section 1010.380 on a nationwide basis. First, on December 3, 2024, in *Texas Top Cop Shop, Inc. v. Bondi*, the U.S. District Court for the Eastern District of Texas, Sherman Division, issued an order that preliminarily enjoined the government from enforcing the C.T.A. and stayed its implementing regulation's reporting deadlines. The government appealed and separately sought a stay of the district court's order pending that appeal, and on January 23, 2025, the Supreme Court granted a stay pending appeal of that order. Second, on January 7, 2025, in *Smith v. U.S. Department of the Treasury*, the U.S. District Court for the Eastern District of Texas, Tyler Division, issued a similar preliminary order that prevented the government from enforcing the C.T.A. against the plaintiffs and stayed the effective date of the implementing regulation during the pendency of that litigation. The government appealed and sought a stay of this order, which the district court granted on February 18, 2025. The district court's stay of its order lifted the last remaining nationwide order preventing FinCEN from implementing and enforcing the C.T.A. and section 1010.380.

Recognizing that the reporting deadlines set by section 1010.380 for many companies had already passed while those deadlines were stayed by court order and that companies would need additional time to comply, FinCEN extended the reporting deadlines for most reporting companies until March 21, 2025.¹⁵ In addition, FinCEN announced that during the 30-day extension period, it would “assess its options to further modify deadlines, while prioritizing reporting for those entities that pose the most significant national security risks.” On March 2, 2025, Treasury announced the suspension of enforcement of the C.T.A. against U.S. citizens, domestic reporting companies, and their beneficial owners, and Treasury further announced its intent to engage in a rulemaking to narrow the Reporting Rule to foreign reporting companies only.

The Interim Final Rule

Overview of Rule

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First, this interim final rule exempts all domestic reporting companies, and their beneficial owners, from the requirement to file initial B.O.I. reports, or to update or correct previously filed B.O.I. reports, by excluding domestic companies from the scope of the term “reporting company,” pursuant to a determination made by the Secretary under 31 U.S.C. 5336(a)(11)(B)(xxiv). The rule text provides for this change by redefining the term “reporting company” at 31 CFR 1010.380(c) to remove the previously defined term “domestic reporting company” at 31 CFR 1010.380(c)(1)(i). By taking this step, any entity that meets the definition of the previously defined term “domestic reporting company” is no longer within the scope of the Reporting Rule. Moreover, FinCEN is adding an exemption to the list of exempted entities at 31 CFR 1010.380(c)(2). This exemption * * * applies to “any entity that is: (A) a corporation, limited liability company, or other entity; and (B) created by the filing of a document with a secretary of state or any similar office under the law of a State or Indian tribe.”

“First, this interim final rule exempts all domestic reporting companies, and their beneficial owners, from the requirement to file initial B.O.I. reports, or to update or correct previously filed B.O.I. reports, by excluding domestic companies from the scope of the term ‘reporting company’
...”

Second, this interim final rule exempts foreign reporting companies, and their U.S. person beneficial owners, from the requirement to provide the B.O.I. of any U.S. persons who are beneficial owners of the foreign reporting company. The rule text provides for this change by adding an exemption at 31 CFR 1010.380(d)(4)(i): “Reporting companies are exempt from the requirement in 31 U.S.C. 5336 and this section to report the beneficial ownership information of any U.S. persons who are beneficial owners.” It also adds an exemption at 31 CFR 1010.380(d)(4)(ii): “U.S. persons are exempt from the requirements in 31 U.S.C. 5336 and this section to provide beneficial ownership information with respect to any reporting company for which they are a beneficial owner.” Foreign reporting companies that only have beneficial owners that are U.S. persons will be exempt from the requirement to report any beneficial owners.

Related to the second exemption, this interim final rule revises the special rule associated with foreign pooled investment vehicles at 31 CFR 1010.380(a)(b)(2)(iii) to exempt foreign pooled investment vehicles from having to report the B.O.I. of U.S. persons who exercise substantial control over the entity. Under the special rule, foreign pooled investment vehicles that would be a reporting company but for the exemption at 31 CFR 1010.380(c)(2)(xviii), and are formed under the laws of a foreign country, are required to report beneficial ownership information solely with respect to an individual who exercises substantial control over the entity. If more than one individual exercises substantial control over the entity, the entity is required to report information with respect to the individual who has the greatest authority over the strategic management of the entity. FinCEN has revised the rule text such that foreign pooled investment vehicles must report the B.O.I. of an individual who exercises substantial control over the entity if that individual is not a U.S. person. If more than one individual exercises substantial control over the entity and at least one of those individuals is not a U.S. person, the entity must report information with respect to the individual who is not a U.S. person who has the greatest authority over the strategic management of the entity. If there is no individual with substantial control who is not a U.S. person, the foreign pooled investment vehicle is not required to report any beneficial owners.

This interim final rule otherwise retains the requirement for foreign reporting companies, and their beneficial owners (excluding U.S. persons), to report their B.O.I. to FinCEN, while extending the deadline for those companies to file initial B.O.I. reports, or update or correct previously filed B.O.I. reports, to 30 days after the date of this publication or 30 days after their registration to do business in the United States, whichever comes later.

FinCEN is accepting comments on this interim final rule. FinCEN will assess the exemptions, as appropriate, in light of those comments and intends to issue a final rule this year.

Exempting Domestic Companies

The C.T.A. recognizes that B.O.I. reporting requirements impose burdens on businesses. The C.T.A. therefore directs the Secretary to “minimize burdens on reporting companies associated with the collection of the information . . . in light of the private compliance costs placed on legitimate businesses.” The C.T.A. also authorizes the Secretary to exempt from the reporting requirements “any entity or class of entities” if the Secretary, with the written concurrence of the Attorney General and the Secretary of Homeland Security, determines that “requiring beneficial ownership information from the entity or class of entities . . . would not serve the public interest” and “would not be highly useful in national security, intelligence, and law enforcement agency efforts to detect, prevent, or prosecute money laundering, the financing of terrorism, proliferation finance, serious tax fraud, or other crimes.”

In issuing the Reporting Rule, FinCEN estimated the burdens imposed on businesses. FinCEN estimated the total aggregate labor costs for reporting companies filing initial B.O.I. reports in the first year of the Reporting Rule to be \$21.7 billion and for reporting companies filing initial B.O.I. in future years to be \$3.3 billion annually. FinCEN estimated the total aggregate labor costs for reporting companies filing updated B.O.I. reports in the first year to be \$1.0 billion and in future years to be \$2.3 billion. Estimates for the five-year average cost were \$6.9 billion for initial reports and \$2.0 billion for updated reports. FinCEN also noted that many comments stated that “the proposed reporting requirements are excessively onerous” and “focused on how the proposed reporting requirements might negatively affect small businesses.” FinCEN further noted that multiple comments stated that “costs to comply with the proposed reporting requirements would hurt small businesses during financially difficult times.” While explaining that it “is sensitive to concerns from small businesses about having to comply with a new set of regulations, and has endeavored to minimize unnecessary compliance burdens,” FinCEN recognized that achieving the C.T.A.’s goal of collecting information that is “highly useful” while “minimiz[ing] burden on reporting companies” requires a “delicate balance.”

On January 20, 2025, there was a change in presidential administrations, which has resulted in a reassessment of the balance struck by the Reporting Rule. On January 31, 2025, President Trump issued Executive Order (E.O.) 14192, Unleashing Prosperity Through Deregulation, which announced an Administration policy “to significantly reduce the private expenditures required to comply with Federal regulations to secure America’s economic prosperity and national security and the highest possible quality of life for each citizen” and “to alleviate unnecessary regulatory burdens placed on the American people.” Consistent with the exemptive authority provided in the C.T.A. and the direction of the President, the Secretary has reassessed the balance between the usefulness of collecting B.O.I. and the regulatory burdens imposed by the scope of the Reporting Rule.



The Secretary, with the written concurrence of the Attorney General and the Secretary of Homeland Security, has determined for purposes of this interim final rule that the reporting of B.O.I. by domestic reporting companies and their beneficial owners “would not serve the public interest” and “would not be highly useful in national security, intelligence, and law enforcement agency efforts to detect, prevent, or prosecute money laundering, the financing of terrorism, proliferation finance, serious tax fraud, or other crimes.” The Secretary is aware that most domestic reporting companies that are not already covered by a statutory exemption are small businesses and that any regulations affecting them must recognize this fact. As the preamble to the Reporting Rule states, “[s]mall businesses are a backbone of the U.S. economy, accounting for a large share of U.S. economic activity, and driving U.S. innovation and competition.” The vast majority of domestic small businesses are legitimate and owned by hard-working American taxpayers who are not engaged in illicit activity. The Secretary has assessed that exempting them would ensure that the Reporting Rule is appropriately tailored to advance the public interest, considering the burdens imposed by the regulations without sufficient benefits. The Attorney General and the Secretary of Homeland Security have concurred that collecting B.O.I. from domestic reporting companies would not be “highly useful in national security, intelligence, and law enforcement agency efforts.” The Secretary’s determination is also consistent with the direction of the President, including as set forth in E.O. 14192, Unleashing Prosperity Through Deregulation.

In conducting this reassessment, the Secretary has considered that failure to require B.O.I. reporting by domestic reporting companies could result in illicit finance risks, as Treasury has acknowledged. For example, the preamble to the Reporting Rule noted that Treasury’s 2022 National Money Laundering Risk Assessments identified lack of timely access to B.O.I. as a key weakness within the U.S. anti-money laundering/countering the financing of terrorism (AML/CFT) regulatory regime. The preamble to the Reporting Rule also noted that while FinCEN’s 2016 customer due diligence rule increased transparency by requiring covered financial institutions to collect a legal entity customer’s B.O.I. at the time of an account opening, it did not address the collection of B.O.I. at the time of a legal entity’s creation, and B.O.I. collected at the time of a legal entity’s creation provides additional insight into the original beneficial owners of the entity. The Secretary has taken illicit finance risks into account in considering the usefulness of collecting B.O.I., the burdens such collection imposes on the public, and the public interest. Additionally, the Secretary has considered alternative sources of information to

mitigate risks. For example, the continuing requirement for covered financial institutions to collect a legal entity customer’s B.O.I. at the time of account opening will serve to mitigate certain illicit finance risks associated with exempting domestic reporting companies from reporting their B.O.I..

Consistent with 31 U.S.C. 5336(a)(11)(B)(xxiv), and after conferring with the Department of Justice and the Department of Homeland Security and receiving written concurrences from the Attorney General and the Secretary of Homeland Security, the Secretary has directed FinCEN to issue this interim final rule exempting domestic reporting companies and their beneficial owners from the reporting requirements imposed through the Reporting Rule. The Secretary has also directed FinCEN to solicit comments on the approach taken in this interim final rule; the Secretary and FinCEN will assess this exemption, as appropriate, in light of those comments, and FinCEN intends to issue a final rule this year.

Reporting by Foreign Reporting Companies

Foreign reporting companies, however, present heightened national security and illicit finance risks and different concerns about regulatory burdens. Congress, through certain provisions in the C.T.A., recognized these heightened concerns about national security and illicit finance risks posed by foreign ownership or foreign control of reporting companies. Congress thus limited certain C.T.A. exemptions to companies that are exclusively domestic. For example, the C.T.A. requires that an entity be a “United States person” and be “beneficially owned or controlled exclusively by 1 or more United States persons that are United States citizens or lawfully admitted for permanent residence” to qualify for the B.O.I. reporting exemption for entities assisting a tax-exempt entity, 31 U.S.C. 5336(a)(11)(B)(xx). In addition, the C.T.A. states that the inactive entity reporting exemption, 31 U.S.C. 5336(a)(11)(B)(xxiii), is available only if an entity is not “owned by a foreign person, whether directly or indirectly, wholly or partially.” These exemptions reflect Congress’s intent to establish narrow, zero-threshold bars for foreign-owned or foreign-controlled entities, given heightened risks posed by companies with foreign ownership or control.

Throughout the rulemaking process implementing the C.T.A.’s reporting requirements, FinCEN has emphasized the risks of foreign illicit actors accessing the U.S. financial system through the use of legal entities created in foreign jurisdictions but registered to do business in the United States. For example, FinCEN noted that “[c]orrupt foreign officials, sanctions evaders, and narco-traffickers, among others, exploit the current gap in the U.S. B.O.I. reporting regime to park their ill-gotten gains in a stable jurisdiction, thereby exposing the United States to serious national security threats.” FinCEN highlighted specific examples of significant criminal investigations into the use of shell companies throughout the world to launder money or evade sanctions imposed by the United States, including sanctions evasion by Iran through shell companies abroad.

Furthermore, on February 4, 2025, President Trump issued a National Security Presidential Memorandum (NSPM) addressing Iranian “behavior [that] threatens the national interest of the United States.” This NSPM directs the Secretary to

maintain countermeasures against Iran at the Financial Action Task Force, evaluate beneficial ownership thresholds to ensure sanctions deny Iran all possible illicit revenue, and evaluate whether financial institutions should adopt a “Know Your Customer’s Customer” standard for Iran-related transactions to further prevent sanctions evasion.

Requiring B.O.I. reporting by foreign reporting companies is consistent with the actions regarding beneficial ownership that this NSPM directs the Secretary to take to address the national security threat arising from Iran.

The Financial Action Task Force (FATF) Report on the Concealment of Beneficial Ownership has also found that shell companies can be used in complex structures involving the distribution of assets across multiple companies in multiple jurisdictions. When these structures are used for illicit purposes, money may flow through multiple layers of shell companies before finally being withdrawn in cash or transferred to its final destination internationally. Of the cases analyzed by FATF that included shell companies, the majority included a corporation located in a foreign jurisdiction. Foreign companies registered to do business in the United States therefore pose a heightened risk to U.S. national security.

“ . . . FinCEN has decided to provide foreign companies with an additional 30 days to comply with the reporting requirements, recognizing that the reporting deadlines had been stayed by court order and were then extended by FinCEN, and that foreign companies will need advance notice of the new deadline.”

At the same time, foreign companies present fewer concerns regarding regulatory burdens that would not serve the public interest. Foreign companies are subject to the Reporting Rule only if they register to do business in the United States, thereby already filing a document in the United States. Moreover, E.O. 14192 announces a policy “to alleviate unnecessary regulatory burdens placed on the American people.” The policy direction to minimize regulatory burdens placed on the American people can be achieved by exempting foreign reporting companies from having to report the B.O.I. of any U.S. persons who are beneficial owners of the foreign reporting company.

Consistent with the C.T.A.’s stated purposes, the C.T.A.’s exclusion of foreign reporting companies from certain other exemptions, the risks identified above, and the relative burdens, the Secretary has determined that exempting foreign companies would not serve the public interest. FinCEN is therefore continuing to require foreign reporting companies to report their B.O.I., except with respect to U.S. person beneficial owners. Foreign reporting companies that only have beneficial owners that are U.S. persons will be exempt from the requirement to report any beneficial owners.

The Secretary has determined for purposes of this interim final rule that it would be appropriate to exempt U.S. persons from having to provide B.O.I. and, accordingly, to exempt foreign reporting companies from having to report the B.O.I. of any U.S. persons who are beneficial owners of a foreign reporting company. The Secretary has assessed that exempting U.S. persons’ B.O.I. would ensure that the Reporting Rule is appropriately tailored to advance the public interest, considering the burdens imposed by the regulations without sufficient benefits. The Secretary’s determination is also consistent with the direction of the President, including as set forth in E.O. 14192, *Unleashing Prosperity Through Deregulation*. In making this determination, the Secretary has considered that exempting reporting companies from reporting U.S. persons’ B.O.I. could result in risks of evasion or illicit finance risks.

Consistent with 31 U.S.C. 5318(a)(7), the Secretary has therefore directed FinCEN to issue this interim final rule exempting foreign reporting companies from having to report the B.O.I. of any U.S. persons who are beneficial owners of a foreign reporting company. The Secretary has also directed FinCEN to solicit comments on the approach taken in this interim final rule; the Secretary and FinCEN will assess this exemption, as appropriate, in light of those comments, and FinCEN intends to issue a final rule this year. In addition, FinCEN has decided to provide foreign companies with an additional 30 days to comply with the reporting requirements, recognizing that the reporting deadlines had been stayed by court order and were then extended by FinCEN, and that foreign companies will need advance notice of the new deadline. * * *