



## DEPARTMENT OF THE TREASURY

### Financial Crimes Enforcement Network

#### 31 CFR Part 1010

#### RIN 1506-AB49

#### Beneficial Ownership Information Reporting Requirements

**AGENCY:** Financial Crimes Enforcement Network (FinCEN), Treasury.

**ACTION:** Advance notice of proposed rulemaking

**SUMMARY:** FinCEN is issuing this advance notice of proposed rulemaking (ANPRM) to solicit public comment on questions pertinent to the implementation of the Corporate Transparency Act (CTA), enacted into law as part of the National Defense Authorization Act for Fiscal Year 2021 (NDAA). This ANPRM seeks initial public input on procedures and standards for reporting companies to submit information to FinCEN about their beneficial owners (the individual natural persons who ultimately own or control the reporting companies) as required by the CTA. This ANPRM also seeks initial public input on FinCEN's implementation of the related provisions of the CTA that govern FinCEN's maintenance and disclosure of beneficial ownership information subject to appropriate protocols.

**DATES:** Written comments on this ANPRM must be received on or before **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]**.

**ADDRESSES:** Comments may be submitted by any of the following methods:

- Federal E-rulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments. Refer to Docket Number FINCEN-2021-0005 and RIN 1506-AB49.
- Mail: Policy Division, Financial Crimes Enforcement Network, P.O. Box 39, Vienna, VA 22183. Refer to Docket Number FINCEN-2021-0005 and RIN 1506-AB49.

#### FOR FURTHER INFORMATION CONTACT:

The FinCEN Regulatory Support Section at 1-800-767-2825 or electronically at [frc@fincen.gov](mailto:frc@fincen.gov).

## **SUPPLEMENTARY INFORMATION:**

### **I. Scope of ANPRM**

This ANPRM seeks comment on FinCEN's implementation of certain provisions in Section 6403 of the CTA.<sup>1</sup> Section 6403 requires reporting companies (corporations, limited liability companies (LLCs), and similar entities, subject to certain statutory exemptions) to submit to FinCEN specified information on their beneficial owners—the individual natural persons who own or control them—as well as specified information about the persons who form or register those reporting companies. Section 6403 further requires FinCEN to maintain this information in a confidential, secure, and non-public database, and it authorizes FinCEN to disclose the information to certain government agencies for certain purposes specified in the CTA, and to financial institutions to assist in meeting their customer due diligence obligations. In both cases, these disclosures are subject to appropriate protocols to protect confidentiality. This ANPRM seeks comment on numerous questions as FinCEN begins to develop proposed regulations implementing these provisions. While only the regulations implementing the reporting requirements must be promulgated by January 1, 2022, with an effective date to be determined, FinCEN also seeks comment at this time on its implementation of the related database maintenance use and disclosure provisions. Section 6403's mandate that the final rule on customer due diligence requirements for financial institutions be revised will be the subject of a separate rulemaking, about which the public will receive notice and opportunity to comment.

### **II. Background**

#### *A. The Bank Secrecy Act*

Enacted in 1970 and amended most recently by the Anti-Money Laundering Act of 2020,

---

<sup>1</sup> The CTA is Title LXIV of the National Defense Authorization Act for Fiscal Year 2021, Pub. L. 116-283 (January 1, 2021). Section 6403 of the CTA, among other things, amends the Bank Secrecy Act by adding a new Section 5336, Beneficial Ownership Information Reporting Requirements, to Subchapter II of Chapter 53 of Title 31, United States Code. To the greatest extent possible, this ANPRM will cite to new 31 U.S.C. 5336.

which includes the CTA, the Bank Secrecy Act (BSA) aids in the prevention of money laundering, terrorism financing, and other illicit activity.<sup>2</sup> The purposes of the BSA include, among other things, “requir[ing] certain reports or records that are highly useful in—(A) criminal, tax, or regulatory investigations, risk assessments, or proceedings; or (B) intelligence or counterintelligence activities, including analysis, to protect against terrorism” and “establish[ing] appropriate frameworks for information sharing” among financial institutions and government authorities.<sup>3</sup>

Congress has authorized the Secretary of the Treasury (the Secretary) to administer the BSA. The Secretary has delegated to the Director of FinCEN the authority to implement, administer, and enforce compliance with the BSA and associated regulations.<sup>4</sup> FinCEN is authorized to require financial institutions or nonfinancial trades or businesses to maintain procedures to ensure compliance with the BSA and the regulations promulgated thereunder and to guard against money laundering, the financing of terrorism, and other forms of illicit finance.<sup>5</sup>

### *B. Beneficial Ownership of Legal Entities*

Legal entities such as corporations and LLCs play an important role in the U.S. economy. By limiting individual liability, corporations and LLCs allow owners to manage the risks associated with participating in business ventures. They also facilitate the formation of capital, making it easier to finance large business projects and structure the relationships among individuals engaged in an enterprise. They often can be formed with relatively few formalities and abbreviated (if any) regulatory review and approval, and their availability can be viewed as a stimulus to investment, entrepreneurship, and economic activity.

---

<sup>2</sup> Section 6003(1) of the Anti-Money Laundering Act of 2020, Division F of the National Defense Authorization Act for Fiscal Year 2021, Pub. L. 116-283 (January 1, 2021), which includes the CTA, defines the Bank Secrecy Act as comprising Section 21 of the Federal Deposit Insurance Act (12 U.S.C. 1829b), Chapter 2 of Title I of Public Law 91-508 (12 U.S.C. 1951 *et seq.*), and Subchapter II of Chapter 53 of Title 31, United States Code.

<sup>3</sup> 31 U.S.C. 5311(1), (5).

<sup>4</sup> Treasury Order 180–01 (Jan. 14, 2020).

<sup>5</sup> 31 U.S.C. 5318(a)(2).

At the same time, legal entities can be misused to conceal and facilitate illicit activity. As Congress recognized in the CTA, “malign actors seek to conceal their ownership of corporations, limited liability companies, or other similar entities in the United States to facilitate illicit activity, including money laundering, the financing of terrorism, proliferation financing, serious tax fraud, human and drug trafficking, counterfeiting, piracy, securities fraud, financial fraud, and acts of foreign corruption[.]”<sup>6</sup> Furthermore, Congress underscored that “money launderers and others involved in commercial activity intentionally conduct transactions through corporate structures in order to evade detection, and may layer such structures . . . across various secretive jurisdictions such that each time an investigator obtains ownership records for a domestic or foreign entity, the newly identified entity is yet another corporate entity, necessitating a repeat of the same process.”<sup>7</sup> The ability to engage in activity and obtain financial services in the name of a legal entity without disclosing the identities of the natural persons who own or control the entity—the natural persons whose interests the legal entity most directly serves—enables those natural persons to conceal their interests. As FinCEN has previously highlighted, such concealment “facilitates crime, threatens national security, and jeopardizes the integrity of the financial system.”<sup>8</sup>

U.S. government reports have consistently identified the ability to operate through legal entities without ready identification of their beneficial owners as a key illicit finance risk for the U.S. financial system. The 2018 National Money Laundering Risk Assessment noted that legal entities are misused by illicit actors to disguise criminal proceeds, and that the lack of readily available beneficial ownership information hampers law enforcement investigations, asset seizures and forfeitures, and international cooperation, as well as the ability of financial institutions to conduct customer due diligence (CDD) and identify suspicious activity.<sup>9</sup> Further,

---

<sup>6</sup> CTA Section 6402(3).

<sup>7</sup> CTA Section 6402(4).

<sup>8</sup> Notice of Proposed Rulemaking: Customer Due Diligence Requirements for Financial Institutions, 79 FR 45151, 45153 (August 4, 2014).

<sup>9</sup> U.S. Department of the Treasury, National Money Laundering Risk Assessment (2018) (2018 NMLRA), pp. 28 – 30, [https://home.treasury.gov/system/files/136/2018NMLRA\\_12-18.pdf](https://home.treasury.gov/system/files/136/2018NMLRA_12-18.pdf).

the 2020 National Strategy to Combat Terrorist and Other Illicit Financing (2020 National Strategy) found that large-scale schemes that generate substantial proceeds for perpetrators and smaller white-collar cases alike routinely involve shell companies.<sup>10</sup> As the Federal Bureau of Investigation (FBI) stated in recent Congressional testimony, the strategic use of shell companies “makes investigations exponentially more difficult and laborious. The burden of uncovering true beneficial owners can often handicap or delay investigations, frequently requiring duplicative, slow-moving legal process in several jurisdictions to gain the necessary information.”<sup>11</sup> Moreover, as the 2020 National Strategy noted, “while some federal law enforcement agencies may have the resources required to undertake complex (and costly) investigations [of this sort], the same is often not true for state, local, and tribal law enforcement.”<sup>12</sup> The burden imposed on investigations by the concealment of beneficial ownership information and the difficulty of obtaining accurate beneficial ownership information thus significantly hampers U.S. anti-money laundering (AML) and countering the financing of terrorism (CFT) efforts.

The United States has taken steps to increase corporate transparency. For example, in October 2001, Congress began requiring U.S. financial institutions that maintain correspondent accounts for certain categories of foreign banks to obtain beneficial ownership information about those banks, including “the identity of each of the owners of the foreign bank, and the nature and extent of the ownership interest of each such owner.”<sup>13</sup> In 2016, FinCEN promulgated the CDD Rule,<sup>14</sup> which, among other things, requires banks, broker-dealers, mutual funds, futures commission merchants, and introducing brokers in commodities to collect

---

<sup>10</sup> U.S. Department of the Treasury, National Strategy for Combating Terrorist and Other Illicit Financing (2020 National Strategy), p. 14, <https://home.treasury.gov/system/files/136/National-Strategy-to-Counter-Illicit-Financev2.pdf>.

<sup>11</sup> Testimony of Steven M. D’Antuono, Acting Deputy Assistant Director, Criminal Investigative Division, Federal Bureau of Investigation, before the Senate Banking, Housing, and Urban Affairs Committee, May 21, 2019.

<sup>12</sup> 2020 National Strategy, p. 14.

<sup>13</sup> 31 U.S.C. 5318(i)(2), added by Section 312(a) of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT) Act of 2001 (Public Law 107-56).

<sup>14</sup> 81 Fed. Reg. 29398 (May 11, 2016).

beneficial ownership information at the time they open new accounts for legal entity customers, including corporations and LLCs.<sup>15</sup>

But these steps are only a partial solution.<sup>16</sup> For example, U.S. legal entities could make payments through foreign accounts to acquire U.S.-based assets and then use those assets to engage in illicit activity without ever undergoing CDD. Further, U.S. legal entities without any U.S.-based accounts could be engaged in illicit activity outside the United States without having ever been subjected to CDD.

Moreover, requiring financial institutions to obtain beneficial ownership information at the time of account opening, as the CDD Rule requires, does not make beneficial ownership information about U.S. legal entities available to law enforcement before an account is opened. Because states have different practices governing the formation of legal entities in the United States, the extent to which information about the beneficial owners of a U.S. legal entity may be otherwise available to law enforcement can vary widely from state to state.

The U.S. government has long recognized that the difficulty of obtaining accurate, up-to-date beneficial ownership information constitutes a fundamental risk that due diligence by U.S. financial institutions cannot completely mitigate. Consequently, the U.S. government has identified this deficiency as the top priority for strengthening the U.S. AML/CFT regime, which, as Congress has noted, is essential to protect U.S. national security.<sup>17</sup> The Financial

---

<sup>15</sup> 31 C.F.R. 1010.230.

<sup>16</sup> See U.S. Money Laundering Threat Assessment Working Group, U.S. Money Laundering Threat Assessment, pp. 48-49 (2005), <https://www.treasury.gov/resource-center/terrorist-illicit-finance/documents/mlta.pdf>. See also Miller, Rena S. and Rosen, Liana W., Beneficial Ownership Transparency in Corporate Formation, Shell Companies, Real Estate, and Financial Transactions, Congressional Research Service (July 8, 2019), <https://crsreports.congress.gov/product/pdf/R/R45798>. In promulgating the CDD Rule, FinCEN noted that the beneficial ownership collection and verification requirements imposed on financial institutions at the account opening stage for legal entities was one part of a strategy that also involved the collection of beneficial ownership information at the time of incorporation. See 81 Fed. Reg. 29398, 29401 ("[C]larifying and strengthening CDD is an important component of Treasury's broader three-part strategy to enhance financial transparency of legal entities. Other key elements of this strategy include: (i) . . . the collection of beneficial ownership information at the time of the legal entity's formation and (ii) facilitating global implementation of international standards regarding CDD and beneficial ownership of legal entities").

<sup>17</sup> CTA Section 6402(5)(B). See 2020 National Strategy, p. 40; 2018 NMLRA, pp. 28 – 30. See also Miller, Rena S. and Rosen, Liana W., Beneficial Ownership Transparency in Corporate Formation, Shell Companies, Real Estate, and Financial Transactions, Congressional Research Service (July 8, 2019), <https://crsreports.congress.gov/product/pdf/R/R45798>.

Action Task Force (FATF), the intergovernmental organization that sets the international standards for combatting money laundering and the financing of terrorism and proliferation, of which the United States is a founding member, has set minimum standards for beneficial ownership transparency, against which over 200 jurisdictions are assessed. Many countries, including the United Kingdom and all member states of the European Union, have incorporated elements derived from these standards into their domestic legal and/or regulatory frameworks.<sup>18</sup> The 2016 FATF Mutual Evaluation Report of the United States underscored the seriousness of this deficiency as the lack of beneficial ownership transparency was one of the main reasons for the United States' failing grade regarding the effectiveness of the transparency of its beneficial ownership regime.<sup>19</sup> FATF has also collaborated with the Egmont Group of Financial Intelligence Units on a study that identifies key techniques used to conceal beneficial ownership and identifies issues for consideration that include coordinated national action to limit the misuse of legal entities.<sup>20</sup> Furthermore, the United States and other major economies have made commitments to enhance beneficial ownership transparency through the then-Group of Eight (G8) and Group of Twenty (G20).<sup>21</sup> The CTA addresses that commitment.

---

<sup>18</sup> The FATF is an international, inter-governmental task force whose purpose is the development and promotion of international standards and the effective implementation of legal, regulatory, and operational measures to combat money laundering, terrorist financing, the financing of proliferation, and other related threats to the integrity of the international financial system. Among other things, it has established standards on transparency and beneficial ownership of legal persons, so as to deter and prevent the misuse of corporate vehicles. The FATF Recommendations require countries to ensure that “adequate, accurate, and timely information on the beneficial ownership and control” of corporate vehicles is available and can be accessed by the competent authorities in a timely fashion. See FATF Recommendation 24, Transparency and Beneficial Ownership of Legal Persons, The FATF Recommendations: International Standards on Combating Money Laundering and the Financing of Terrorism and Proliferation (updated October, 2020), <http://www.fatf-gafi.org/publications/fatfrecommendations/documents/fatf-recommendations.html>; FATF Guidance, Transparency and Beneficial Ownership at par. 3 (October 2014), <https://www.fatf-gafi.org/media/fatf/documents/reports/Guidance-transparency-beneficial-ownership.pdf>.

<sup>19</sup> See FATF, Mutual Evaluation of the United States (2016), p. 4 (key findings) and Ch. 7.

<sup>20</sup> FATF-Egmont Group, Concealment of Beneficial Ownership (2018), [https://www.egmontgroup.org/sites/default/files/filedepot/Concealment\\_of\\_BO/FATF-Egmont-Concealment-beneficial-ownership.pdf](https://www.egmontgroup.org/sites/default/files/filedepot/Concealment_of_BO/FATF-Egmont-Concealment-beneficial-ownership.pdf).

<sup>21</sup> See, e.g., United States G-8 Action Plan for Transparency of Company Ownership and Control (June 2013), <https://obamawhitehouse.archives.gov/the-press-office/2013/06/18/united-states-g-8-action-plan-transparency-company-ownership-and-control>; G8 Lough Erne Declaration (July 2013), <https://www.gov.uk/government/publications/g8-lough-erne-declaration>; G20 High Level Principles on Beneficial Ownership (2014), [http://www.g20.utoronto.ca/2014/g20\\_high-level\\_principles\\_beneficial\\_ownership\\_transparency.pdf](http://www.g20.utoronto.ca/2014/g20_high-level_principles_beneficial_ownership_transparency.pdf); United States Action Plan to Implement the G-20 High Level Principles on Beneficial Ownership (Oct. 2015), <https://obamawhitehouse.archives.gov/blog/2015/10/16/us-action-plan-implement-g-20-high-level-principles-beneficial-ownership>.

### *C. The CTA*

The CTA, which Congress enacted on January 1, 2021, establishes a new framework for the reporting, maintenance, and disclosure of beneficial ownership information to:

- Set a clear federal standard for incorporation practices;
- Protect vital U.S. national security interests;
- Protect interstate and foreign commerce;
- Better enable critical national security, intelligence, and law enforcement efforts to counter money laundering, the financing of terrorism, and other illicit activity; and
- Bring the United States into compliance with international AML/CFT standards.<sup>22</sup>

Section 6403 of the CTA amends the BSA by adding a new section at 31 U.S.C. 5336 that requires the reporting of beneficial ownership information at the time of formation or registration, along with protections to ensure that the reported beneficial ownership information is maintained securely and accessed only by authorized persons for limited uses. The CTA requires the Secretary to promulgate implementing regulations that prescribe procedures and standards governing the reporting and use of such information, to include procedures governing the issuance of “FinCEN identifiers” for beneficial ownership information reporting.<sup>23</sup> The CTA requires FinCEN to maintain beneficial ownership information in a secure, non-public database that is highly useful to national security, intelligence, and law enforcement agencies, as well as federal functional regulators.<sup>24</sup>

Through this ANPRM, FinCEN seeks input on how best to implement the reporting requirements of the CTA, as well as the CTA’s provisions regarding FinCEN’s maintenance

---

<sup>22</sup> CTA Section 6402(5).

<sup>23</sup> See 31 U.S.C. 5336(b)(5), added by CTA Section 6403(a). How FinCEN will issue these identifiers, whether individuals and legal entities will use (and will need to be issued) different types of identifiers, and whether other types of identifiers may be useable as FinCEN identifiers are among the issues about which the CTA is silent. This ANPRM accordingly includes some questions relating to the FinCEN identifier.

<sup>24</sup> CTA Section 6402(7)(A), (8)(C). The Federal functional regulators are the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the National Credit Union Administration, the Office of the Comptroller of the Currency, and the Securities and Exchange Commission, and any other federal regulator that examines financial institutions for compliance with the BSA. CTA Section 6003(3) (citing 15 U.S.C. 6809).



and disclosure of reported information, from regulated parties; the governments of the states, U.S. possessions, local jurisdictions, and Indian tribes; law enforcement; regulatory agencies; other consumers of BSA data; and any other interested parties. FinCEN sets forth below specific questions based upon the statutory requirements and welcomes comments on any other issues relevant to the implementation of the CTA.<sup>25</sup>

### III. Requirements of the CTA

In general, the CTA requires a reporting company<sup>26</sup>—in accordance with rules to be issued by FinCEN—to submit to FinCEN information that identifies the beneficial owner(s)<sup>27</sup> and applicant(s)<sup>28</sup> of the reporting company.<sup>29</sup> Specifically, reporting companies must report, for each identified beneficial owner and applicant, the following information: (i) full legal name; (ii) date of birth; (iii) current residential or business street address; and (iv) a unique identifying number from an acceptable identification document *or* the individual’s FinCEN identifier.<sup>30</sup> The CTA defines a beneficial owner of an entity as an individual who, directly or indirectly, through any contract, arrangement, understanding, relationship, or otherwise (i) exercises substantial control over the entity, or (ii) owns or controls not less than 25 percent of the ownership interests of the entity.<sup>31</sup> The CTA defines a reporting company as a corporation, LLC, or other similar entity that is (i) created by the filing of a document with a secretary of state or a similar office under the law of a state or Indian tribe, or (ii) formed under the law of a

---

<sup>25</sup> The CTA requires FinCEN to undertake a separate process, subsequent to the issuance of a final rule on legal entity beneficial ownership reporting, to revise CDD requirements for financial institutions in light of the new legal entity reporting requirements. While FinCEN welcomes comments in response to this ANPRM that address the effects of different design choices with respect to legal entity reporting on the ultimate shape of financial institution CDD requirements, persons wishing to comment on such issues should be aware that they will have another opportunity at a later time to comment on the revision of CDD requirements, when FinCEN undertakes that separate process.

<sup>26</sup> Defined at 31 U.S.C. 5336(a)(11), added by CTA Section 6403(a).

<sup>27</sup> Defined at 31 U.S.C. 5336(a)(3), added by CTA Section 6403(a).

<sup>28</sup> Defined at 31 U.S.C. 5336(a)(2), added by CTA Section 6403(a).

<sup>29</sup> 31 U.S.C. 5336(b)(1), (2)(A), added by CTA Section 6403(a).

<sup>30</sup> 31 U.S.C. 5336(b)(2)(A), added by CTA Section 6403(a).

<sup>31</sup> 31 U.S.C. 5336(a)(3), added by CTA Section 6403(a). The definition contains certain exceptions, including, under certain circumstances: (i) minors whose parent or guardian file their own beneficial ownership information; (ii) individuals who act as nominees, intermediaries, custodians, or agents; (iii) individuals acting solely as employees of an entity; (iv) individuals with interests through rights of inheritance; and (v) individuals who are creditors. *See* 31 U.S.C. 5336(a)(3)(B), added by CTA Section 6403(a).

foreign country and registered to do business in the United States by the filing of a document with a secretary of state or a similar office under the laws of a state or Indian tribe. The CTA exempts certain categories of entities from the reporting requirement.<sup>32</sup>

The CTA also requires that FinCEN issue a “FinCEN identifier” to an individual or entity that has submitted the required beneficial ownership information, if the individual or entity so requests.<sup>33</sup> A FinCEN identifier is to be a unique identifier for each individual or entity that may be used for subsequent reporting to FinCEN in lieu of providing certain other information.<sup>34</sup>

The CTA requires FinCEN to maintain the reported beneficial ownership information in a secure, non-public database for not fewer than five years after the date on which the reporting company terminates.<sup>35</sup>

The CTA prohibits the unauthorized disclosure of beneficial ownership information collected by FinCEN, including authorized recipients’ subsequent disclosures for unauthorized purposes.<sup>36</sup> Pursuant to the CTA, FinCEN may disclose beneficial ownership information upon receipt of: (i) a request, through appropriate protocols, from a federal agency engaged in national security, intelligence, or law enforcement activity, for use in furtherance of such activity;<sup>37</sup> (ii) a request, through appropriate protocols, from a non-federal law enforcement agency with specified court authorization;<sup>38</sup> (iii) a request from a federal agency on behalf of certain foreign requestors under specified conditions;<sup>39</sup> (iv) a request by a financial institution

---

<sup>32</sup> 31 U.S.C. 5336(a)(11)(B), added by CTA Section 6403(a). The definition of reporting company specifically exempts 24 categories of entities, including certain types of registered entities (*e.g.*, various companies registered under federal securities laws and the Commodity Exchange Act, FinCEN-registered money transmitters, and registered public accounting firms); banks; credit unions; public utility companies; certain tax exempt entities; entities with specified levels of operations in the United States; entities owned or controlled by other entities that qualify for one of several other specified exemptions; and certain kinds of dormant entities, among others. The Secretary, with the concurrence of the Attorney General and the Secretary of Homeland Security, may by regulation also exempt additional categories of entities.

<sup>33</sup> 31 U.S.C. 5336(b)(2)(A)(iv), (b)(3), added by CTA Section 6403(a).

<sup>34</sup> 31 U.S.C. 5336(a)(6), (b)(2)(A)(iv), (b)(3), added by CTA Section 6403(a).

<sup>35</sup> 31 U.S.C. 5336(c)(1), added by CTA Section 6403(a); CTA Section 6402(7).

<sup>36</sup> 31 U.S.C. 5336(c)(2)(A), added by CTA Section 6403(a).

<sup>37</sup> 31 U.S.C. 5336(c)(2)(B)(i)(I), added by CTA Section 6403(a).

<sup>38</sup> 31 U.S.C. 5336(c)(2)(B)(i)(II), added by CTA Section 6403(a).

<sup>39</sup> 31 U.S.C. 5336(c)(2)(B)(ii), added by CTA Section 6403(a).

subject to CDD requirements, with the consent of the reporting company, to facilitate compliance with CDD requirements under applicable law;<sup>40</sup> and (v) a request by a Federal functional regulator or other appropriate regulatory agency under certain circumstances.<sup>41</sup> The CTA also authorizes officers and employees of the Department of the Treasury to access beneficial ownership information consistent with their official duties and subject to procedures and safeguards prescribed by the Secretary.<sup>42</sup>

The CTA requires the Secretary to promulgate regulations prescribing procedures and standards governing beneficial ownership reporting and the FinCEN identifier by January 1, 2022.<sup>43</sup> These regulations will specify a subsequent effective date, which will be informed by information received pursuant to the notice and comment process. FinCEN intends to provide a reasonable timeframe for stakeholders to implement the regulations.

The regulations promulgated pursuant to the CTA are required to specify certain procedures, methods, and standards. Some of these specifications must be included in the regulations that are to be promulgated within a year of the CTA's enactment:

- Prescribing procedures and standards governing reporting of beneficial ownership information and any FinCEN identifier;<sup>44</sup>
- Specifying the information required to be reported and the reporting method;<sup>45</sup>
- Specifying the method for reporting changes in beneficial ownership (for both entities and persons holding FinCEN identifiers);<sup>46</sup> and
- Specifying reporting requirements for exempt subsidiaries and exempt grandfathered entities that cease to be exempt.<sup>47</sup>

Others do not have to be included in the CTA regulations required by January 1, 2022, but the

---

<sup>40</sup> 31 U.S.C. 5336(c)(2)(B)(iii), added by CTA Section 6403(a).

<sup>41</sup> 31 U.S.C. 5336(c)(2)(B)(iv), added by CTA Section 6403(a).

<sup>42</sup> 31 U.S.C. 5336(c)(5), added by CTA Section 6403(a).

<sup>43</sup> 31 U.S.C. 5336(b)(5), added by CTA Section 6403(a).

<sup>44</sup> 31 U.S.C. 5336(b)(4)(A), added by CTA Section 6403(a).

<sup>45</sup> 31 U.S.C. 5336(b)(1)(A)-(C), (2)(A), added by CTA Section 6403(a).

<sup>46</sup> 31 U.S.C. 5336(b)(1)(D), (3)(A)(ii), added by CTA Section 6403(a).

<sup>47</sup> 31 U.S.C. 5336(b)(1)(B), (2)(D), (2)(E), added by CTA Section 6403(a).

specific requirements of the reporting regulations that must be finalized by that date may affect these other specifications:

- The form and manner in which information shall be provided by FinCEN to a financial institution for CDD, and to certain regulatory agencies for certain purposes;<sup>48</sup>
- Protocols to protect the security and confidentiality of beneficial ownership information, to include obligations on requesting agencies;<sup>49</sup> and
- Establishment of a safe harbor for persons seeking to amend previously submitted but inaccurate beneficial ownership information.<sup>50</sup>

Further, the CTA requires the Secretary to take certain actions in developing these regulations. This includes an obligation to reach out to members of the small business community and other appropriate parties to ensure efficiency and effectiveness of the process for the entities subject to the requirements of the CTA.<sup>51</sup> Additionally, in promulgating the required regulations prescribing procedures and standards governing reporting of beneficial ownership information and any FinCEN identifier, the CTA requires FinCEN, to the greatest extent practicable, to:

- Establish partnerships with State, local, and Tribal governmental agencies;
- Collect required identity information of beneficial owners through existing federal, state, and local processes and procedures;
- Minimize burdens on reporting companies associated with the collection of the required information, in light of the private compliance costs placed on legitimate businesses, including by identifying any steps taken to mitigate the costs relating to compliance with the collection of information; and
- Collect the required information in a form and manner that ensures the information is highly useful in (a) facilitating important national security, intelligence, and law

---

<sup>48</sup> 31 U.S.C. 5336(c)(2)(C), added by CTA Section 6403(a).

<sup>49</sup> 31 U.S.C. 5336(c)(3), added by CTA Section 6403(a).

<sup>50</sup> 31 U.S.C. 5336(h)(3)(C), added by CTA Section 6403(a).

<sup>51</sup> 31 U.S.C. 5336(g), added by CTA Section 6403(a).

enforcement activities, and (b) confirming beneficial ownership information provided to financial institutions in order to facilitate financial institutions' compliance with AML, CFT, and CDD requirements under applicable law.<sup>52</sup>

#### **IV. Questions for Comment**

FinCEN invites comments on all aspects of the CTA, but specifically seeks comments on the questions listed below. FinCEN encourages commenters to reference specific question numbers to facilitate FinCEN's review of comments.

##### *Definitions*

- 1) The CTA requires reporting of beneficial ownership information by “reporting companies,” which are defined, subject to certain exceptions, as including corporations, LLCs, or any “other similar entity” that is created by the filing of a document with a secretary of state or a similar office under the law of a state or Indian tribe or formed under the law of a foreign country and registered to do business in the United States by the filing of such a document.
  - a. How should FinCEN interpret the phrase “other similar entity,” and what factors should FinCEN consider in determining whether an entity qualifies as a similar entity?
  - b. What types of entities other than corporations and LLCs should be considered similar entities that should be included or excluded from the reporting requirements?
  - c. If possible, propose a definition of the type of “other similar entity” that should be included, and explain how that type of entity satisfies the statutory standard, as well as why that type of entity should be covered. For example, if a commenter thinks that state-chartered non-depository trust companies should be considered

---

<sup>52</sup> 31 U.S.C. 5336(b)(1)(F), added by CTA Section 6403(a). FinCEN anticipates that fulfillment of these requirements will involve in-depth engagement with federal as well as state, local, and tribal government agencies.

similar entities and required to report, the commenter should explain how, in the commenter's opinion, such companies satisfy the requirement that they be formed by filing a document with a secretary of state or "similar office."

- 2) The CTA limits the definition of reporting companies to corporations, LLCs, and other similar entities that are "created by the filing of a document with a secretary of state or a similar office under the law of a State or Indian Tribe" or "registered to do business in the United States by the filing of a document with a secretary of state or a similar office under the laws of a State or Indian Tribe."
  - a. Does this language describe corporate filing practices and the applicable law of the states and Indian tribes sufficiently clearly to avoid confusion about whether an entity does or does not meet this requirement?
  - b. If not, what additional clarifications could make it easier to determine whether this requirement applies to a particular entity?
- 3) The CTA defines the "beneficial owner" of an entity, subject to certain exceptions, as "an individual who, directly or indirectly, through any contract, arrangement, understanding, relationship, or otherwise" either "exercises substantial control over the entity" or "owns or controls not less than 25 percent of the ownership interests of the entity." Is this definition, including the specified exceptions, sufficiently clear, or are there aspects of this definition and specified exceptions that FinCEN should clarify by regulation?
  - a. To what extent should FinCEN's regulatory definition of beneficial owner in this context be the same as, or similar to, the current CDD rule's definition or the standards used to determine who is a beneficial owner under 17 CFR §240.13d-3 adopted under the Securities Exchange Act of 1934?
  - b. Should FinCEN define either or both of the terms "own" and "control" with respect to the ownership interests of an entity? If so, should such a definition be drawn from or based on an existing definition in another area, such as securities

law or tax law?

- c. Should FinCEN define the term “substantial control”? If so, should FinCEN define “substantial control” to mean that no reporting company can have more than one beneficial owner who is considered to be in substantial control of the company, or should FinCEN define that term to make it possible that a reporting company may have more than one beneficial owner with “substantial control”?
- 4) The CTA defines the term “applicant” as an individual who “files an application to form” or “registers or files an application to register” a reporting company under applicable state or tribal law. Is this language sufficiently clear, in light of current law and current filing and registration practices, or should FinCEN expand on this definition, and if so how?
- 5) Are there any other terms used in the CTA, in addition to those the CTA defines, that should be defined in FinCEN’s regulations to provide additional clarity? If so, which terms, why should FinCEN define such terms by regulation, and how should any such terms be defined?
- 6) The CTA contains numerous defined exemptions from the definition of “reporting company.” Are these exemptions sufficiently clear, or are there aspects of any of these definitions that FinCEN should clarify by regulation?
- 7) In addition to the statutory exemptions from the definition of “reporting company,” the CTA authorizes the Secretary, with the concurrence of the Attorney General and the Secretary of Homeland Security, to exempt any other entity or class of entities by regulation, upon making certain determinations.<sup>53</sup> Are there any categories of entities that are not currently subject to an exemption from the definition of “reporting company” that FinCEN should consider for an exemption pursuant to this authority, and if so why?

---

<sup>53</sup> 31 U.S.C. 5336(a)(11)(B)(xxiv), added by CTA Section 6403(a).

- 8) If a trust or special purpose vehicle is formed by a filing with a secretary of state or a similar office, should it be included or excluded from the reporting requirements?
- 9) How should a company's eligibility for any exemption from the reporting requirements, including any exemption from the definition of "reporting company," be determined?
  - a. What information should FinCEN require companies to provide to qualify for these exemptions, and what verification process should that information undergo?
  - b. Should there be different information requirements for operating companies and holding companies, for active companies and dormant companies, or are there other bases for distinguishing between types of companies?
  - c. Should exempt entities be required to file periodic reports to support the continued application of the relevant exemption (*e.g.*, annually)?

*Reporting of beneficial ownership information*

- 10) What information should FinCEN require a reporting company to provide about the reporting company itself to ensure the beneficial ownership database is highly useful to authorized users?
- 11) What information should FinCEN require a reporting company to provide about the reporting company's corporate affiliates, parents, and subsidiaries, particularly given that in some cases multiple companies can be layered on top of one another in complex ownership structures?
- 12) Should a reporting company be required to provide information about the reporting company's corporate affiliates, parents, and subsidiaries as a matter of course, or only when that information has a bearing on the reporting company's ultimate beneficial owner(s)?
- 13) What information, if any, should FinCEN require a reporting company to provide about the nature of a reporting company's relationship to its beneficial owners (including any corporate intermediaries or any other contract, arrangement, understanding, or



relationship), to ensure that the beneficial ownership database is highly useful to authorized users?

14) Persons currently obligated to file reports with FinCEN overwhelmingly do so electronically, either on a form-by-form basis or in batches using proprietary software developed by private-sector technology service providers.

- a. Should FinCEN allow electronic filing of required information about reporting companies (including the termination of such companies), beneficial owners, and applicants under the CTA?
- b. Should FinCEN allow or support any mechanisms other than direct electronic filing?
- c. Should FinCEN allow or support direct batch filing of required information?
- d. Should there be any differences among the mechanisms used for different types of information or different types of filers?
- e. Should any additional or alternative reporting system involve the collection of information from the states and Indian tribes, and if so how?
- f. Should the filing mechanisms for reporting companies be different for entities that were previously exempt for one reason or another (including exempt subsidiaries and exempt grandfathered entities under section 5336(b)(2)(D) and (E)) and lose that exemption? If so how?

15) Section 5336(b)(2)(C) requires written certifications to be filed with FinCEN by exempt pooled investment vehicles described in section 5336(a)(11)(B)(xviii) that are formed under the laws of a foreign country.

- a. By what method should these certifications be filed?
- b. What information should be included in these certifications?
- c. Should there be a mechanism through which such filings could be made to foreign authorities and forwarded to FinCEN, or should such filings have to be made

directly to FinCEN?

- d. What information should be included in these certifications (e.g., what information would allow authorities to follow up on certifications containing false information)?
- e. Should these certifications be accessible to database users, and if so, should they be accessible on the same terms as beneficial ownership information of reporting companies?

16) What burdens do you anticipate in connection with the new reporting requirements?

Please identify any burdens with specificity, and estimate the dollar costs of these burdens if possible. How could FinCEN minimize any such burdens on reporting companies associated with the collection of beneficial ownership information in a manner that ensures the information is highly useful in facilitating important national security, intelligence, and law enforcement activities and confirming beneficial ownership information provided to financial institutions, consistent with its statutory obligations under the CTA?

17) Section 5336(e)(1) requires the Secretary to take reasonable steps to provide notice to persons of their reporting obligations.

- a. What steps should be taken to provide such notice?
- b. Should those steps include direct communications such as mailed notices, and if so to whom should notices be mailed?
- c. What type of information should be included in such a notice, for example, the purposes and uses of the data, and how to access and correct the information?
- d. Should the notice be followed by an explicit acknowledgement of the reporting company, or consent of the beneficial owner or applicant if the owner or applicant is submitting the information, to the handling of beneficial ownership information as stated in the notice and applicable law?

18) Section 5336(e)(2) requires states and Indian tribes, as a condition of receiving certain funds, to have their Secretary of State or a similar office in each state or Indian tribe periodically provide notice of reporting obligations and a copy of, or internet link to, the reporting company form created by FinCEN.

- a. How should this requirement be implemented?
- b. What form should the notice take?
- c. Should this notice be provided yearly, or on some other periodic schedule?

19) What should reporting companies or individuals holding FinCEN identifiers be required to do to satisfy the requirement of section 5336(b)(1)(D) that they update in a timely manner the information they have submitted when it changes, such as when beneficial owners or holders of FinCEN identifiers (i) transfer substantial control to other individuals; (ii) change their legal names or their reported residential or business street addresses; or (iii) die; or (iv) when a previously acceptable identification document expires? For example, should the reporting companies or individuals be required to file a new report, or provide notice only of the information that has changed?

20) Should reporting companies be required to affirmatively confirm the continuing accuracy of previously submitted beneficial ownership information on a periodic basis (e.g., annually)? How should such confirmation be communicated to FinCEN?

21) For those reporting companies without FinCEN identifiers, what should be considered a “timely manner”<sup>54</sup> for updating a change in beneficial ownership?

- a. Should this period differ based on the type of reporting company?
- b. What factors should be taken into account in determining this period?
- c. How much time should reporting companies be given to update beneficial owner information upon a change of ownership?
- d. What are the benefits or drawbacks of allowing a longer period to report a change

---

<sup>54</sup> 31 U.S.C. 5336(b)(3)(A)(ii), added by CTA Section 6403(a).

of beneficial ownership?

- 22) Section 5336(h)(3)(C) contains a safe harbor for persons who seek to correct previously submitted but inaccurate beneficial ownership information pursuant to FinCEN regulations. How should FinCEN's regulations define the scope of this safe harbor? Should the nature of the inaccuracy (e.g., a misspelled address versus the complete omission of a beneficial owner) be relevant to the availability of the safe harbor?
- 23) What steps should reporting companies be required to take to support and confirm the accuracy of beneficial ownership information?
- a. Should reporting companies be required to certify the accuracy of their information when they submit it?
  - b. If so, what should this certification cover?
  - c. Should reporting companies be required to submit copies of a beneficial owner's acceptable identification document?
- 24) What steps should FinCEN take to ensure that beneficial ownership information being reported is accurate and complete?
- a. With respect to other BSA reports, FinCEN e-filing protocols prohibit filings from being made with certain blank fields, and automatically format certain fields to ensure that letters are not entered for numbers and vice versa, etc. The filing protocols, however, do not involve independent FinCEN verification of information filed. Should FinCEN take similar or additional steps in connection with the filing of beneficial ownership information?
  - b. If so, what similar or additional steps should FinCEN take?
- 25) Should a reporting company be required to report information about a company's "applicant" or "applicants" (the individual or individuals who file the application to form or register a reporting company) in any report after the reporting company's initial report to FinCEN? Why or why not?

*FinCEN identifier*

- 26) In what situations will an individual or entity wish to use the FinCEN identifier? How can FinCEN best protect both the privacy interests underlying an individual's or entity's desire to use the FinCEN identifier, and the identifying information that must be provided to FinCEN by an individual or entity wishing to obtain and use the FinCEN identifier?
- 27) What form should the FinCEN identifier take?
- a. How long should it be?
  - b. Should it be alphabetical, numeric, or alphanumeric?
  - c. Should it contain embedded information such as a filing year, a geographic code, a sequential number, or numbers shared among related persons or entities, or should it be generated independently for each individual or entity?
  - d. Should it resemble or be derived from another identifier provided by another authority?
  - e. Should it resemble the document numbers of other reports filed with FinCEN under the BSA?
  - f. Should the form of FinCEN identifiers for individuals and legal entities be different? If so, how and why?
- 28) How can FinCEN best ensure a one-to-one relationship between individuals or entities and their FinCEN identifiers, in light of the possibility that individuals and entities may mistakenly or intentionally attempt to apply for more than one FinCEN identifier?<sup>55</sup>
- 29) How can FinCEN best protect FinCEN identifiers from being used without individuals' and entities' authorization? Should protections include specific regulatory requirements or prohibitions?

---

<sup>55</sup> For example, this could happen when different employees of the same organization, without realizing, apply independently for a FinCEN identifier, or when an individual applies more than once using identity numbers from different forms of identification mistakenly thinking it is necessary to obtain a separate FinCEN identification for each company of which the individual is a beneficial owner.

30) As noted in the CTA, in some cases multiple companies can be layered on top of one another in complex ownership structures. Given that there may be multiple entities within an ownership structure of a reporting company that are identified by FinCEN identifiers, how can FinCEN implement the FinCEN identifier in a way that reduces the burden to financial institutions of using the FinCEN database when reporting companies with complex ownership structures seek to open an account?

31) What should the process be to obtain a FinCEN identifier?

- a. a) Should the FinCEN identifier be secured by an applicant or beneficial owner prior to filing an application to form a corporation, LLC, or other similar entity under the laws of a state or Indian tribe?
- b. b) How, if at all, should FinCEN verify an individual's identity before providing a FinCEN identifier?
- c. c) If an applicant or beneficial owner chooses not to apply for a FinCEN identifier, should FinCEN create any limitations -- in addition to those in the statutory definition of "acceptable identification document" -- on the types of unique identifying numbers that can be submitted?

*Security and use of beneficial ownership and applicant information*

32) When a state, local, or tribal law enforcement agency requests beneficial ownership information pursuant to an authorization from a court of competent jurisdiction to seek the information in a criminal or civil investigation, how, if at all, should FinCEN authenticate or confirm such authorization?

33) Should FinCEN provide a definition or criteria for determining whether a court has "competent jurisdiction" or has "authorized" such an order? If so, what definition or criteria would be appropriate?

34) As a U.S. Government agency, FinCEN is subject to strict security and privacy laws, regulations, and other requirements that will protect the security and confidentiality of

beneficial ownership and applicant information. What additional security and privacy measures should FinCEN implement to protect this information and limit its use to authorized purposes, which includes facilitating important national security, intelligence, and law enforcement activities as well as financial institutions' compliance with AML, CFT, and CDD requirements under applicable law? Would it be sufficient to make misuse of such information subject to existing penalties for violations of the BSA and FinCEN regulations, or should other protections be put in place, and if so what should they be?

35) How can FinCEN make beneficial ownership information available to financial institutions with CDD obligations so as to make that information most useful to those financial institutions?

- a. Please describe whether financial institutions should be able to use that information for other customer identification purposes, including verification of customer information program information, with the consent of the reporting company?
- b. Please describe whether FinCEN should make financial institution access more efficient by permitting reporting companies to pre-authorize specific financial institutions to which such information should be made available?
- c. In response to requests from financial institutions for beneficial ownership information, pursuant to 31 U.S.C. 5336(c)(2)(A), what is a reasonable period within which FinCEN should provide a response? Please also describe what specific information should be provided.

36) How should FinCEN handle updated reporting for changes in beneficial ownership when beneficial ownership information has been previously requested by financial institutions, federal functional regulators, law enforcement, or other appropriate regulatory agencies?

- a. If a requestor has previously requested and received beneficial ownership

information concerning a particular legal entity, should the requester automatically receive notification from FinCEN that an update to the beneficial ownership information was subsequently submitted by the legal entity customer?

- b. If so, how should this notification be provided?
- c. Should a requesting entity have to opt in to receive such notification of updated reporting?

37) One category of authorized access to beneficial ownership information from the FinCEN database involves “a request made by a Federal functional regulator or other appropriate regulatory agency.”<sup>56</sup> How should the term “appropriate regulatory agency” be interpreted? Should it be defined by regulation? If so, why and how?

38) In what circumstances should applicant information be accessible on the same terms as beneficial ownership information (i.e., to agencies engaged in national security, intelligence, or law enforcement; to non-federal law enforcement agencies; to federal agencies, on behalf of certain foreign requestors; to federal functional regulators or other agencies; and to financial institutions subject to CDD requirements). If financial institutions are not required to consider applicant information in connection with due diligence on a reporting company opening an account, for example, should a financial institution’s terms of access to applicant information differ from the terms of its access to beneficial ownership information?

*Cost, process, outreach, and partnership*

39) What specific costs would CTA requirements impose – in terms of time, money, and human resources – on small businesses? Are those costs greater for certain types of small businesses than others? What specifically can FinCEN do to minimize those costs, for all small businesses or for some types in particular?

---

<sup>56</sup> 31 U.S.C. 5336(c)(2)(B)(iv), added by CTA Section 6403(a).



- 40) Are there alternatives to a single reporting requirement for all reporting companies that could create a less costly alternative for small businesses?
- 41) How can FinCEN best reach out to members of the small business community to ensure the efficiency and effectiveness of the filing process for entities subject to the requirements of the CTA?
- 42) Are there other business constituencies to which FinCEN should reach out , and if so, who are they?
- 43) How can FinCEN best reach out to financial institutions to ensure the efficiency and effectiveness of the process by which financial institutions could potentially access the beneficial ownership information held by FinCEN?
- 44) What burdens would CTA requirements impose on state, local, and tribal governmental agencies? In particular, what additional time, money, and human resources would state, local, and tribal governments have to secure and expend – or reallocate from other duties, and if the latter what duties would be compromised or services impaired? How, if at all, would any of these burdens or allocations of time or money vary according to the size or other characteristics of a jurisdiction – would smaller jurisdictions find it easier or harder to handle the costs associated with CTA requirements?
- 45) How should FinCEN minimize any burdens on state, local, and tribal governmental agencies associated with the collection of beneficial ownership information, while still achieving the purposes of the CTA?
- 46) How can FinCEN best partner with state, local, and tribal governmental agencies to achieve the purposes of the CTA?
- 47) How can FinCEN collect the identity information of beneficial owners through existing Federal, state, local, and tribal processes and procedures?
- a. Would FinCEN use of such processes or procedures be practicable and appropriate?

- b. Would FinCEN use of or reliance on existing processes and procedures help to lessen the costs to state, local, and tribal government agencies, or would it increase those costs?
- c. Would FinCEN use of existing Federal, state, local, and tribal processes and procedures help to lessen the costs to small businesses affected by CTA requirements, or would it increase those costs?

48) The process of forming legal entities may have ramifications that extend beyond the legal and economic consequences for legal entities themselves, and the reporting of beneficial ownership information about legal entities may have ramifications that extend beyond the effect of mobilizing such information for AML/CFT purposes. How can FinCEN best engage representatives of civil society stakeholders that may not be directly affected by a beneficial ownership information reporting rule but that are concerned for such larger ramifications?

## **V. Regulatory Planning and Review**

This advance notice of proposed rulemaking is a significant regulatory action under Executive Order 12866 and has been reviewed by the Office of Management and Budget.

## **VI. Conclusion**

Implementing an effective system to identify, collect, and permit authorized uses of beneficial ownership information will strengthen U.S. national security and the integrity of the U.S. financial system, and protect people from harm. With this ANPRM, FinCEN seeks input on how FinCEN should implement such a system, consistent with the requirements of the CTA, to maximize benefits while minimizing burdens on reporting companies. FinCEN seeks input from the public on the questions set forth above, including from regulated parties; state, local, and Tribal governments; law enforcement; regulators; other consumers of BSA data; and any other interested parties. FinCEN also welcomes comments on all aspects of the ANPRM and any other aspects of implementation of the CTA. FinCEN encourages all interested parties to

provide their views.

By the Department of the Treasury.

AnnaLou Tirol  
Deputy Director  
Financial Crimes Enforcement Network

[FR Doc. 2021-06922 Filed: 4/1/2021 8:45 am; Publication Date: 4/5/2021]