

FinCEN releases initial beneficial ownership information reporting guidance

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FinCEN issued guidance to help the small business community understand the beneficial ownership information reporting rule requirements that take effect on January 1, 2024. Small businesses may find the guidance useful in answering basic questions about the rule, but will likely need additional guidance to address more complex questions about the rule's requirements.

On March 24, 2023, the Financial Crimes Enforcement Network (FinCEN) released [the first set of guidance](#) on the forthcoming beneficial ownership information reporting rule ([BOI Reporting Rule](#)) requirements, which we discuss [here](#). The BOI Reporting Rule is the first of three rulemakings that will implement the Corporate Transparency Act (CTA) portion of the Anti-Money Laundering Act of 2020. The second rule (the Access Rule) will govern access to a secure central database containing beneficial ownership information (the Registry), and the third will make conforming amendments to FinCEN's existing Customer Due Diligence Rule.

While the guidance is another step forward in FinCEN's efforts to implement the CTA, it only addresses basic requirements and does not answer the more complex questions about application of the BOI Reporting Rule. FinCEN has indicated that it expects to publish further guidance in the future.

FinCEN issued the final BOI Reporting Rule on September 30, 2022, and released a proposed Access Rule on December 15, 2022. The Access Rule was met with significant resistance from financial institutions, small businesses, and members of Congress.¹ Resistance to the Access Rule, coupled with concerns about whether FinCEN has the necessary resources to implement the CTA in a timely fashion, call into question whether the Registry will be operational by January 1, 2024, the effective date of the BOI Reporting Rule. Accordingly, financial institutions and small businesses should closely monitor FinCEN's efforts in this regard, ensuring that they are prepared to adapt to a new and likely rapidly changing BOI reporting framework.

Overview of FinCEN's BOI reporting guidance

FinCEN's guidance is primarily intended for small businesses, namely to help these businesses understand the new BOI reporting requirements. FinCEN's BOI reporting guidance includes the following resources:

- [Beneficial ownership information reporting frequently asked questions \(FAQs\)](#). FinCEN released an initial set of FAQs, providing a set of responses that, taken together, give a basic overview of the BOI reporting requirements for reporting companies, including the timing, substance and purpose of the BOI reports. The FAQs also consolidate and streamline explanations of key terms such as “beneficial owner,” “company applicant,” and “reporting company.”
- [Beneficial ownership information reporting filing dates handout](#). The filing dates handout provides reporting companies a one-page overview of the key timing requirements related to BOI reports, reinforcing that (1) companies that exist prior to January 1, 2024 must file BOI reports with FinCEN by January 1, 2025; and (2) companies created or registered after January 1, 2024 must file BOI reports to FinCEN within 30 days of receiving actual or public notice that the creation or registration of the reporting company is effective. The handout also provides guidance on when reporting companies are required to submit updated and/or corrected reports to FinCEN.²

- **[Beneficial ownership reporting – key questions handout](#)**. The key questions handout is a one-page, high-level set of FAQs that address six basic questions related to BOI reporting, including which companies are required to submit BOI reports to FinCEN, what BOI information must be reported, and when the BOI reports are required to be filed with FinCEN.
- **[Introductory](#) and [detailed](#) informational videos**. Notably, FinCEN released publicly available videos that provide the same information captured in the FAQs. The videos are accessible through the U.S. Department of the Treasury's [YouTube channel](#).

While FinCEN's BOI reporting guidance is not specifically intended for financial institutions, community and regional banks (or other financial institutions whose customer bases include non-exempt reporting companies) will likely find it useful to include FinCEN's guidance among their customer onboarding and education materials, ensuring that their customers are aware of the forthcoming BOI reporting requirements. Finally, FinCEN also indicated in its press release that the Agency will publish additional guidance at www.fincen.gov/boi in the coming months, to include a Small Entity Compliance Guide. Although there is no indication of what the additional guidance will cover, there is hope that FinCEN will provide perspective on more difficult questions, such as whether and to what extent companies created to effectuate complex transactions will be required to submit BOI reports.

If you have any questions regarding the matters covered in this publication, please reach out to any of the lawyers listed below or your usual Davis Polk contact.

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- ¹ See, e.g., Press Release, [Whitehouse, Grassley, Wyden, Rubio, Warren Push Fincen to Improve Implementation of Corporate Transparency Act](#) (March 16, 2023). Notably, the bipartisan comment letter to FinCEN stated, "While we appreciate the time and effort you have put into the implementation of this critical law, we have concerns that this proposed rule strays from congressional intent and erects unnecessary and costly barriers to accessing beneficial ownership information that risk undermining the utility of the beneficial ownership directory ... We encourage you to revise the rule to ensure it tracks closer to the text of the statute, remove excessive barriers to accessing the directory by authorized recipients, and enhance the utility of the directory."
- ² Updated reports are due within 30 calendar days after a change occurs, and corrected reports are due within 30 calendar days after a reporting company becomes aware or has reason to know of an inaccuracy.