

FinCEN eliminates beneficial ownership reporting requirements for U.S. companies and U.S. persons

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U.S. companies and U.S. persons are now exempt from the beneficial ownership reporting requirements under the Corporate Transparency Act and Beneficial Ownership Information Reporting Rule.

Following the U.S. Treasury Department's March 2 announcement that it would suspend enforcement of the Beneficial Ownership Information Reporting Rule (BOI Reporting Rule) and Corporate Transparency Act (CTA) against U.S. citizens and domestic companies,¹ the Financial Crimes Enforcement Network (FinCEN) issued an [interim final rule](#) on March 21, 2025 that eliminates the beneficial ownership information (BOI) reporting requirements for U.S. companies and U.S. persons (the Interim Final Rule) under the BOI Reporting Rule. The key takeaways from the Interim Final Rule are:

1. U.S. companies and U.S. persons are exempt from the reporting requirements of the CTA and BOI Reporting Rule.
2. Foreign reporting companies that do not qualify for an exemption from the BOI Reporting Rule must file BOI reports by April 25, 2025 or 30 days after a foreign reporting company registers to do business in the United States, whichever date is later.
3. Foreign reporting companies *will not* be required to report any U.S. persons as beneficial owners, and U.S. persons will not be required to report BOI with respect to any foreign reporting company for which they are a beneficial owner.

Although the Interim Final Rule is effective and has the force of law, FinCEN has solicited public comments on the Interim Final Rule and intends to issue a final rule later this year, which we expect will generally align with the Interim Final Rule. Given the dynamic nature of the regulatory environment related to the CTA and BOI Reporting Rule, however, we recommend that domestic and foreign companies engage in the comment process, to the extent there are any unanswered questions, and continue to monitor for any updates from Treasury and FinCEN.

Overview of the Interim Final Rule

What is an interim final rule?

Federal agencies generally issue interim final rules to impose legally-binding requirements without providing public notice and an opportunity to comment before the rule is finalized. Federal agencies will, instead, solicit public comment after the interim final rule is promulgated, leaving open the possibility that the agency will make modifications in a final rule in response to public comments. Importantly, interim final rules are effective upon publication and, thus, carry the force of law.

The Administrative Procedure Act (APA) provides an exception to its proposed rulemaking requirements when a federal agency finds that it has "good cause" to issue an interim final rule without first publishing a proposed rule.² Notably, in the Interim Final Rule, FinCEN stated it found that "the need to expeditiously exempt domestic reporting companies and U.S. persons who are beneficial owners of foreign reporting companies" satisfies the APA's "good cause" exception. FinCEN

further states that it would be impractical to solicit public comment because the agency would not have time to review comments before its self-imposed March 21, 2025 deadline. FinCEN will solicit public comment until May 27, 2025 and will issue a final rule later this year, which we expect will generally align with the Interim Final Rule.

Overview of the revisions to the BOI Reporting Rule

Through the Interim Final Rule, FinCEN has eliminated the BOI reporting requirements for U.S. entities and U.S. persons with four key revisions to the BOI Reporting Rule:

1. **The Interim Final Rule removes “domestic reporting company” from the “reporting company” definition.** As a result, entities that meet the definition of the previously defined term “domestic reporting company” (i.e., U.S. companies created by the filing of a document with a secretary of state or a similar office) are no longer within the scope of the BOI Reporting Rule.
2. **The Interim Final Rule adds “domestic reporting companies” to the list of exempted entities under the BOI Reporting Rule.** Moving forward, all companies that meet the following definition are expressly exempt from the BOI Reporting Rule: “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.”
3. **The Interim Final Rule exempts foreign reporting companies, and their U.S. person beneficial owners, from the requirement to provide the BOI of any U.S. persons who are beneficial owners of the foreign reporting company.** What this means is that foreign reporting companies that only have beneficial owners that are U.S. persons will be exempt from the requirement to report any beneficial owners. In such cases, however, foreign reporting companies will still be required to submit the other required identifying information about the company (e.g., their address and jurisdiction of incorporation) and, as applicable, company applicant information. The Interim Final Rule also requires foreign reporting companies to update any information in their BOI reports, as needed, and to correct any previously reported information.
4. **The Interim Final Rule modifies the special rule for foreign pooled investment vehicles such that such that foreign pooled investment vehicles are only required to report the BOI of foreign beneficial owners who exercise substantial control over the entity.** If more than one individual exercises substantial control over the pooled investment vehicle and at least one of those individuals is not a U.S. person, the entity must report BOI with respect to the non-U.S. beneficial owner who has the greatest authority over the strategic management of the entity.

FinCEN’s legal basis for narrowing the BOI Reporting Rule

An important question stemming from the Treasury Department’s March 2 announcement was whether Treasury and/or FinCEN had the authority to substantially limit the scope of the CTA and BOI Reporting Rule.³ Notably, the CTA exempts certain categories of entities from the “reporting company” definition and authorizes the Secretary of the Treasury, with the written concurrence of the Attorney General and the Secretary of Homeland Security, to exempt further categories of entities if their BOI would not serve the public interest or be useful to national security, intelligence, and law enforcement efforts.⁴ Ostensibly in an effort to meet the requirements under the CTA, the Interim Final Rule states that the change of presidential administrations has resulted in a “reassessment of the balance struck” by the BOI Reporting Rule, and the Secretary of the Treasury determined (with the concurrence of the Attorney General and the Secretary of Homeland Security) that collecting BOI of domestic reporting companies and their beneficial owners would no longer serve the public interest or provide useful information for national security, intelligence, or law enforcement efforts.

FinCEN further states that it has the authority under the Bank Secrecy Act (BSA) to exempt foreign reporting companies from having to report the BOI of any U.S. person beneficial owners, as well as to exempt U.S. persons from having to provide their BOI information to foreign reporting companies and amend the special rule applying to foreign pooled investment vehicles.⁵

Looking forward

FinCEN’s modifications to the BOI Reporting Rule have significantly narrowed the scope of the BOI Reporting Rule—according to the Interim Final Rule, FinCEN only expects approximately 12,000 foreign reporting companies to submit BOI reports, a drastic reduction from the near 32 million reporting companies that were initially in scope of the BOI Reporting Rule. While the Interim Final Rule may provide welcome relief to domestic reporting companies, a number of open questions remain:

- **What about the requirements related to FinCEN identifiers?** The Interim Final Rule does not address the requirements related to FinCEN identifiers. Further, FinCEN has yet to provide any guidance or process for how

individuals may deactivate their FinCEN identifiers. Accordingly, while U.S. persons are no longer subject to BOI reporting requirements, the Interim Final Rule does not relieve U.S. persons from the requirements related to FinCEN identifiers. In practice, this would mean that any U.S. person who has obtained a FinCEN identifier is technically required to update the BOI submitted to obtain their FinCEN identifier indefinitely. Given Treasury's March 2 announcement, however, we do not expect FinCEN will enforce the BOI Reporting Rule's requirements related to FinCEN identifiers against U.S. persons.

- **Will FinCEN's actions be challenged in court?** Like other rulemakings, the Interim Final Rule (or the final rule, once issued) may be challenged in federal courts under the APA by a plaintiff with standing. For example, a plaintiff may argue that FinCEN's amendments to the BOI Reporting Rule are inconsistent with the language and policy of the CTA or that FinCEN failed to adequately explain its rationale for issuing an Interim Final Rule.⁶ A plaintiff may also argue that FinCEN failed to adequately address the factual findings of the CTA and BOI Reporting Rule, which focus primarily on illicit finance vulnerabilities relating to *domestic entities*.⁷ To challenge the agency's actions, however, a plaintiff would need to establish standing – meaning, among other things, the plaintiff must show an injury caused by FinCEN's decision to exempt domestic reporting companies from BOI reporting requirements. While this may be challenging to demonstrate to a court, the possibility cannot be ruled out: for example, a foreign reporting company could argue that it was placed at a competitive disadvantage by being required to report when domestic entities were not.
- **Will FinCEN make further changes in its final rule?** FinCEN stated that it intends to solicit public comments on the Interim Final Rule and that it will consider and address the comments when “a final rule, with changes if warranted, is issued.” We expect that the final rule will generally align with the Interim Final Rule; however it remains to be seen if FinCEN will make further changes in light of public comments.
- **How will litigation challenging the CTA affect FinCEN's actions (and vice versa)?** Litigation challenging the constitutionality of the CTA and BOI Reporting Rule remains ongoing in multiple jurisdictions, including cases before the Fifth Circuit (as described in previous client updates [here](#) and [here](#)). It is possible that the matter will ultimately be reviewed by the Supreme Court. While the Justice Department has continued to defend the constitutionality of the CTA under the new administration, FinCEN's actions have been an area of focus of the courts, and the Fifth Circuit recently requested supplemental briefs on the implication of the Interim Final Rule on the government's arguments. By the same token, the outcome of the pending court cases may affect the future of the CTA and BOI Reporting Rule, including its scope and enforceability.
- **What does this mean for the amendments to FinCEN's 2016 Customer Due Diligence Rule (CDD Rule)?** As noted in our prior [client update](#), the CTA requires FinCEN to issue a rule amending the agency's CDD Rule to align with the BOI Reporting Rule, and FinCEN issued a final rule in December 2023 that establishes standards for financial institutions and government entities to access BOI. It is unclear how FinCEN will address the CTA's requirement to amend the CDD Rule (and how it will affect the compliance responsibilities of financial institutions). Notably, FinCEN did not otherwise modify the definition of “beneficial owner” in the Interim Final Rule, meaning it remains broader in the BOI Reporting Rule than under the CDD Rule. It is also unclear whether financial institutions will be permitted to access BOI on U.S. companies and persons that has already been reported to FinCEN (and what will happen to previously reported data).
- **Are there other potential risks for domestic reporting companies?** While domestic reporting companies are no longer required to submit reports under the BOI Reporting Rule, many companies have made *contractual* commitments to submit BOI reports to FinCEN in commercial agreements. Depending on the language used in their agreements (e.g., a general covenant to comply with the CTA), some companies may remain contractually bound to submit reports, notwithstanding the changes to the regulatory requirements. There are also future compliance considerations if the Interim Final Rule's changes are reversed, either by a court or a new administration (note, while future enforcement could be legally available, it seems highly remote at the present time that Treasury would ever bring an action given the Interim Final Rule). It is possible, for example, that a subsequent administration would reinstate reporting requirements for domestic reporting companies to align with the congressional intent of the CTA.⁸ If this were the case, domestic reporting companies created in the intervening period (or before) would be required to submit BOI Reports, and U.S. companies would once again be required to manage CTA compliance.

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 We discuss Treasury's March 2 announcement in our prior [client update](#).
- ² Specifically, the APA authorizes federal agencies to issue interim final rules when the agency finds, for good cause, that notice and comment is "impracticable, unnecessary, or contrary to the public interest." See 5.U.S.C. 553(b)(B).
- ³ For example, on March 10, 2025, Senator Whitehouse and Senator Grassley sent a [letter](#) to Treasury Secretary Bessent to explain the legal basis for the Treasury Department's decisions to suspend enforcement of the CTA's reporting requirements for U.S. citizens and domestic reporting companies.
- ⁴ 31 U.S.C 5336(a)(11)(B) (xxiv).
- ⁵ The Interim Final Rule specifically cites 31 U.S.C. 5318(a)(7), which states that the Treasury Secretary may generally "prescribe an appropriate exemption from a requirement" of the BSA and its implementing regulations.
- ⁶ While agencies continue to receive deference in their decisions to modify rules, they must provide a reasoned explanation, and the Supreme Court has held that a more detailed justification is required where a rule "rests upon factual findings that contradict those which underlay its prior policy." *FCC v. Fox Television Stations, Inc.*, 556 U.S. 502, 515 (2009).
- ⁷ For example, the Sense of Congress in Section 6402 of the CTA notes that "most or all States do not require information about the beneficial owners of the corporations, limited liability companies, or other similar entities formed under the laws of the State" and "Federal legislation providing for the collection of beneficial ownership information for corporations, limited liability companies, or other similar entities formed under the laws of the States is needed" to protect U.S. national security interests.
- ⁸ Congress very clearly intended the CTA to cover U.S. companies, as demonstrated by the CTA's definition of "domestic reporting companies."