

FinCEN Begins Rulemaking for Beneficial Ownership Registry

April 5, 2021

The Financial Crimes Enforcement Network (**FinCEN**) of the U.S. Department of the Treasury has begun a rulemaking to implement the beneficial ownership reporting provisions of the new Corporate Transparency Act (**CTA**).¹ This is the first step in creating a national registry of beneficial ownership information and issuing implementing regulations for the Anti-Money Laundering Act of 2020 (**AMLA**).² For key takeaways on the AMLA, please see our memo available [here](#).

Overview

The newly-adopted CTA is part of the Bank Secrecy Act and is intended to discourage the use of shell corporations to disguise and move illicit funds. Section 6403 of the CTA requires legal entities to report beneficial ownership information at the time of formation or registration. FinCEN will maintain this information in the Beneficial Ownership Registry (the **Registry**). The CTA authorizes FinCEN to disclose beneficial ownership information, subject to certain protocols and for specific purposes to certain recipients such as regulatory agencies and law enforcement.

On April 1, 2021, FinCEN issued an [Advance Notice of Proposed Rulemaking](#) to invite comments on 48 questions that include the reporting requirements of the CTA, the establishment and maintenance of the Registry, and the disclosure of beneficial ownership information.

Key questions for affected financial institutions are whether the Registry will be useful and whether it will mitigate or add to their compliance burdens. Although the AMLA requires rescission of most of the beneficial ownership requirements of the current Customer Due Diligence Rule,³ FinCEN is not required to issue the revised Customer Due Diligence Rule until one year after the effective date of the rule that is the subject of the Advance Notice of Proposed Rulemaking. In the meantime, financial institutions will still need to comply with the current Customer Due Diligence Rule, and it seems likely that most financial institutions will continue with their existing beneficial ownership procedures, even after the current Customer Due Diligence Rule is replaced. Institutions will need to reconcile existing procedures with the Registry once it is up and running. Questions also remain about how FinCEN will ensure the reliability of the Registry, as well as accountability for information accuracy.

FinCEN should provide greater clarity in the final rule about these issues and the Federal Banking Agencies should communicate their expectations. While the comment period for the proposed rulemaking is short, FinCEN's willingness to commence the process with the advance notice signals its willingness to engage with affected industries. It is critically important for financial institutions to provide comments and stay engaged in the rulemaking process.

Comments are due on May 5, 2021. FinCEN must finalize the rule by January 2022, and we expect FinCEN to issue additional AMLA rulemakings in the near future.

¹ Corporate Transparency Act, Title LXIV of the National Defense Authorization Act for Fiscal Year 2021, Pub. L. 116-283 (January 1, 2021).

² 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).

³ 81 Fed. Reg. 29398 (May 11, 2016).

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