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Reporting beneficial owners of certain US companies: proposed regulations on what information must be disclosed

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- › [Introduction](#)
- › [Background](#)
- › [Identifying details for individuals](#)
- › [Identifying information for reporting companies](#)
- › [FinCEN identifier](#)
- › [Comment](#)

Introduction

On 7 December 2021, the US Department of the Treasury's Financial Crimes Enforcement Network (FinCEN) issued proposed regulations with details to begin compiling a beneficial owner register for US companies under the Corporate Transparency Act (CTA). This article is the third in a series discussing the proposed regulations in the context of family succession planning structures, focusing specifically on what information must be disclosed.⁽¹⁾

Background

Enacted 1 January 2021, the CTA establishes a beneficial owner reporting regime for US companies, pursuant to which reporting companies must submit a report containing "beneficial owner" and "company applicant" information (together, "beneficial ownership information" (BOI)). For further details please see ["Reporting beneficial owners of certain US companies – details of new Corporate Transparency Act"](#).

The proposed regulations are intended to clarify the various BOI requirements of the CTA, including:

- who must file a BOI report;
- what constitutes beneficial ownership;
- what information must be disclosed in a BOI report; and
- when the information must be reported.

This article summarises the proposed regulations regarding what information must be disclosed in a BOI report.

Once a company is determined to be a reporting company (for further details please see ["Reporting beneficial owners of certain US companies: proposed regulations on who must file a beneficial owner report"](#)), and its beneficial owners and company applicants are identified (for further details please see ["Reporting beneficial owners of certain US companies: proposed regulations on what constitutes beneficial ownership"](#)), a report including specified details for each individual must be filed with FinCEN.

Identifying details for individuals

Consistent with the CTA's statutory requirement, the proposed regulations require reporting companies to disclose in a BOI report the following information regarding each of its beneficial owners and company applicants:

- full legal name;
- date of birth;
- complete current address, which is the residential address the individual uses for tax purposes or, in the case of a company applicant who provides corporate formation services as a business, that business's street address; and
- unique identifying number from an acceptable identification document (eg, a passport or driver's license number).

The proposed regulations also require the reporting company to provide a scanned copy of the identification document from which the unique identifying number of the beneficial owner or company applicant is obtained. This scanned copy must include both the unique identifying number and the individual's photograph in sufficient quality to be legible or recognisable. FinCEN believes that the collection of images would "significantly contribute to the creation of a highly useful database for law enforcement and other authorized users" because it will help them recognise the actual person from the photo and also make it more difficult to provide false information to FinCEN.

FinCEN also welcomes additional voluntary information regarding each beneficial owner or company applicant – for example, such person's tax identification or social security number (noting, however, that such additional voluntary information requires the consent of each such beneficial owner or company applicant). Advisers to international families concerned about maintaining the family's privacy and potential data leaks will want to consider CTA required security, checks and balances, and intention for information to remain non-public and secure (for further details please see [Reporting beneficial owners of certain US companies: observations relevant to private client structures"](#)).

Identifying information for reporting companies

Although not specified in the CTA, the proposed regulations also require reporting companies to include certain information about



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themselves in a BOI report as follows:

- full name of the reporting company;
- any trade name or "doing business as" name of the reporting company;
- business street address of the reporting company;
- jurisdiction of formation or registration; and
- taxpayer identification number (TIN), including an employer identification number, but if a TIN is not yet issued, a Dun & Bradstreet data universal numbering system number or a legal entity identifier.

FinCEN believes the requirement to submit a reporting company's business street address:

precludes the reporting of the address of the reporting company's formation agent or other third party representatives, but [FinCEN] welcomes comments on whether the term 'business street address' is sufficiently clear.

With more virtual work options now available, some companies may not have a bricks and mortar street address. Advisers need to be aware that an operating presence at a physical office within the United States is required for certain exemptions from the definition of "reporting company". Furthermore, reporting companies that serve merely as holding entities generally require no US physical presence. These types of holding company structures are a primary target of the CTA. However, if there really is no physical place of business, then it is yet to be determined which address to report. At a minimum, FinCEN aims to preclude listing the addresses of formation agents and other third parties.

FinCEN identifier

The proposed regulations provide further guidance on obtaining and using a FinCEN identifier, which individuals and entities are allowed to provide in lieu of providing the full list of the required information about themselves every time. Beneficial owners and company applicants can apply for a FinCEN identifier by submitting an application containing the information that a reporting company would otherwise be required to provide in its BOI report with respect to them. Similarly, reporting companies can apply for a FinCEN identifier by submitting an application with or after an initial BOI report with FinCEN.

Utilising a FinCEN identifier may prove useful for individuals connected to more than one reporting company. First, individuals can simply update their required FinCEN identifier information rather than each and every reporting company where they are named as beneficial owner or company applicant having to update its report. Second, providing a FinCEN identifier in a CTA report, in lieu of one's personal information, could help to minimise inadvertent exposure of such private information.

Comment

As discussed in the prior articles in this series, defining the beneficial owner of a reporting company as any individual who, directly or indirectly, through any contract, arrangement, understanding, relationship or otherwise, exercises substantial control over the entity or owns or controls not less than 25% of the ownership interests of the entity, is so broad that numerous reports may be required for each reporting entity. Advisers to families with succession planning structures that include US companies should take a wide angle look at all possible individuals who may have to be reported and begin to gather the specific details and documentation that must be included for each individual. Hopefully, final regulations will clarify which individuals must be reported and provide for exclusions that will reduce the administrative burden.

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Endnotes

(1) For previous articles in the series, see:

- "Reporting beneficial owners of certain US companies: proposed regulations on who must file beneficial owner report"; and
- "Reporting beneficial owners of certain US companies: proposed regulations on what constitutes beneficial ownership".