

Beneficial Ownership Reporting Requirements under the Corporate Transparency Act



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The Corporate Transparency Act created new reporting requirements that will affect many family businesses and other entities that families use in their wealth structures.¹ Under the act, reporting companies must provide information about their beneficial owners to the Financial Crimes Enforcement Network (FinCEN).² On September 30, 2022, FinCEN issued regulations implementing the reporting requirements.³ These reporting requirements, which apply to many family-controlled and other types of companies, aim to diminish the ability of bad actors to use entities for illicit purposes, including corruption, money laundering, terrorist financing, and tax evasion.⁴ These reporting requirements are effective January 1, 2024.⁵

What is a reporting company?

A reporting company is either a domestic reporting company or a foreign reporting company.⁶ A domestic reporting company generally is an entity that is created by the filing of a document with a secretary of state or similar office of a jurisdiction within the United States.⁷ A corporation or limited liability company formed in the United States is a domestic reporting company.⁸ A limited liability partnership, limited liability limited partnership, or business trust (which is also known as a statutory trust or Massachusetts trust) formed in the United States would likely be a domestic reporting company, because each of those types of entities is typically formed by a filing with a secretary of state or similar office.⁹ In many cases, a limited partnership would likely be a domestic reporting company for the same reason.¹⁰

A foreign reporting company generally is an entity that is formed under the law of a foreign jurisdiction and is registered to do business within the United States.¹¹ A corporation, limited liability company, or other entity that's formed outside the United States and registered in the United States is a foreign reporting company. Since the laws governing registration typically apply to all types of entities, foreign reporting companies likely will include more types of entities than domestic reporting companies.¹²

Trusts

Many families use trusts in connection with wealth planning. A trust typically isn't a reporting company, because it isn't formed by filing a document with a secretary of state or similar office.¹³ FinCEN acknowledges this in the preamble to the proposed regulations and, despite some calls to include trusts within the ambit of reporting companies, again in the preamble to the final regulations.¹⁴

This ultimately may change. On December 6, 2021, the Biden-Harris Administration released the *United States Strategy on Countering Corruption*.¹⁵ In this report, the administration establishes five pillars for fighting corruption. The second pillar focuses on curbing illicit finance. One of the strategic objectives hints at expanding the beneficial owner information reporting requirements.¹⁶

Although a trust typically isn't a reporting company and thus doesn't have an obligation to submit information about its beneficial owners, FinCEN will inevitably receive

¹ Pub. Law 116-283 (2020), §§ 6401 to 6403.

² See, generally, 31 USC § 5336(b)(1).

³ *Beneficial Ownership Information Reporting Requirements*, 87 Fed. Reg. 59498 (September 30, 2022). In 2021, FinCEN promulgated proposed regulations. See *Beneficial Ownership Information Reporting Requirements*, 86 Fed. Reg. 69920 (December 8, 2021). FinCEN had previously issued an advance notice of proposed rulemaking, soliciting comments on the regulations implementing the reporting requirements. See *Beneficial Ownership Information Reporting Requirements*, 86 Fed. Reg. 17557 (April 5, 2021).

⁴ 87 Fed. Reg. 59498, 59500-59507.

⁵ 87 Fed. Reg. 59498, 59498.

⁶ 31 CFR § 1010.380(c)(1).

⁷ 31 CFR § 1010.380(c)(1)(i).

⁸ See 86 Fed. Reg. 69920, 69938-69939.

⁹ *Id.*

¹⁰ *Id.*

¹¹ 31 CFR § 1010.380(c)(1)(ii).

¹² See 86 Fed. Reg. 69920, 69939. See also 87 Fed. Reg. 59498, 59538-39.

¹³ See 31 CFR § 1010.380(c)(1)(i).

¹⁴ 86 Fed. Reg. 69920, 69939, and 87 Fed. Reg. 59498, 59537.

¹⁵ White House, *United States Strategy on Countering Corruption* (2021) ("Countering Corruption").

¹⁶ *Countering Corruption*, pp. 10-11.

information about some settlors, beneficiaries, and trustees. In some cases, a settlor, beneficiary, trustee, or other individual who has an interest or power in a trust may be a beneficial owner of a reporting company when the trust holds ownership interests in the company.¹⁷

Exemptions

A company isn't a reporting company if it qualifies for an exemption. There are more than two dozen exemptions.¹⁸ They include:

- Publicly traded companies
- Large operating companies
- Banks and credit unions
- Insurance companies
- Broker dealers
- Registered investment advisers
- Pooled investment funds
- Accounting firms
- Tax-exempt organizations
- Inactive entities

For many families, the three most relevant exemptions likely are those for large operating companies, tax-exempt organizations, and inactive entities. Notably, there isn't a specific exemption for family offices.

Large operating companies

Some family-controlled businesses may qualify as a large operating company. A large operating company is a company that:

- employs more than 20 employees on a full-time basis in the United States,
- has an operating presence at a physical office in the United States, and

- for the previous year, filed a federal income tax return showing more than \$5 million of gross receipts or sales (net of returns and allowances).¹⁹

For purposes of the gross receipts test, the company must exclude gross receipts or sales from outside the United States.²⁰ In the case of an affiliated group that files a consolidated return, the group's gross receipts determine whether its members satisfy the gross receipts test.²¹

Tax-exempt organizations

A public charity, private foundation, or other tax-exempt 501(c) organization is not a reporting company.²² Thus, a family foundation typically isn't a reporting company. If a 501(c) organization loses its tax-exempt status, it won't become a reporting company until 180 days after the loss of that status.²³

Inactive entities

An inactive entity is not a reporting company.²⁴

An entity is an inactive entity if it:

- was in existence on or before January 1, 2020,
- is not engaged in active business,
- is not owned (directly or indirectly) by a non-US person (either in whole or in part),
- during the preceding 12 months, has not experienced any change in ownership,
- during the preceding 12 months, has not sent or received any funds in an amount greater than \$1,000, and
- does not hold any assets (whether in the United States or abroad), including any ownership interest in any corporation, limited liability company, or other similar entity.²⁵

¹⁷ 31 CFR § 1010.380(d)(2)(ii)(C).

¹⁸ 31 USC § 5336(a)(11)(B). See also 31 CFR § 1010.380(c)(2). The statute contains 23 categories of exemptions and authorizes FinCEN to establish additional exemptions. Some of the statutory categories exempt more than one type of company.

¹⁹ 31 USC § 5336(a)(11)(B)(xxi). See also 31 CFR § 1010.380(c)(2)(xxi).

²⁰ 31 CFR § 1010.380(c)(2)(xxi)(C).

²¹ Id.

²² 31 USC § 5336(a)(11)(B)(xix)(I) and 31 CFR § 1010.380(c)(2)(xix). A 501(c) organization is an organization described in Section 501(c) of the Internal Revenue Code.

²³ Id.

²⁴ 31 USC § 5336(a)(11)(B)(xxiii) and 31 CFR § 1010.380(c)(2)(xxiii). The regulations adopt the term "inactive entity" to refer to an entity that qualifies for this exemption. 31 CFR § 1010.380(c)(2)(xxiii). The preamble to the proposed regulations and the preamble to the final regulations also uses the term "dormant entities." 86 Fed. Reg. 69920, 69940, and 87 Fed. Reg. 59498, 59539. The statute regrettably uses the term "exempt grandfathered entity" despite the racist origins of "grandfathered." See Alan Greenblatt, "The Racial History of the 'Grandfather Clause,'" NPR, October 22, 2013, <https://www.npr.org/sections/codeswitch/2013/10/21/239081586/the-racial-history-of-the-grandfather-clause>.

²⁵ 31 CFR § 1010.380(c)(2)(xxiii). The regulations use the term "foreign person" rather than "non-US person." Under the regulations, a foreign person is a person who isn't a US person for US tax purposes. 31 CFR §§ 1010.380(f)(3) and (f)(10).

About whom must a reporting company report?

A reporting company must report information about its beneficial owners and company applicants.²⁶

Beneficial owners

A beneficial owner is an individual who (directly or indirectly) exercises substantial control over the reporting company or an individual who owns or controls 25% or more of the reporting company's ownership interests.²⁷

Substantial control test

There are three indicators of substantial control, which aim to "identify the individuals who stand behind the reporting company and direct its actions."²⁸ In broad terms, these indicators are:

- Serving as a senior officer
- Having the power to remove and appoint senior officers or (in some cases) directors
- Having the power to direct or influence substantial decisions affecting the company

As the preamble to the final regulations observe, "the first indicator identifies the individuals with nominal or *de jure* authority, and the second and third indicators identify the individuals with functional or *de facto* authority."²⁹ In addition to those three indicators, the final regulations include a catch-all provision. FinCEN expects that at least one individual will have substantial control over each company and, in some cases, more than one individual may have substantial control over a company.³⁰

Serving as a senior officer. An individual exercises substantial control over a reporting company if the individual serves as a senior officer of the company.³¹ A company's senior officers include its president, chief financial officer, general counsel, chief executive officer,

and chief operating officer.³² A company's senior officers also include any other officer who, regardless of title, performs a similar function.³³ In the preamble to the final regulations, FinCEN observed that a company's secretary or treasurer often perform only ministerial functions and have little control of the company.³⁴ Accordingly, a company's secretary or treasurer isn't automatically a senior officer but can be if the individual performs a function similar to a president, chief financial officer, general counsel, chief executive officer, or chief operating officer.³⁵

Having the power to remove and appoint senior officers or (in some cases) directors. An individual exercises substantial control over a reporting company if the individual has the power to appoint or remove:

- any of the company's senior officers, or
- a majority of the company's directors (or similar body).³⁶

Having the power to direct or influence substantial decisions affecting the company. An individual exercises substantial control over a reporting company if the individual can direct or substantially influence major decisions affecting the company.³⁷ These include:

- the nature, scope, and attributes of the company's business,
- the sale, lease, mortgage, or other transfer of any of the company's principal assets,
- the reorganization, dissolution, or merger of the company,
- major expenditures or investments,
- the issuances of equity,
- the incurrence of significant debt,
- the approval of the company's operating budget,
- the selection or termination of the company's business lines, business ventures, or geographic focus,
- compensation of senior officers,

²⁶ See generally 31 USC § 5336(b)(1).

²⁷ 31 USC § 5336(a)(3) and 31 CFR § 1010.380(d).

²⁸ 87 Fed. Reg. 59498, 59526. See also 86 Fed. Reg. 69920, 69933-34.

²⁹ *Id.*

³⁰ 87 Fed. Reg. 59498, 59528-30.

³¹ 31 CFR § 1010.380(d)(1)(i)(A).

³² 31 CFR § 1010.380(f)(8).

³³ *Id.*

³⁴ 87 Fed. Reg. 59498, 59526.

³⁵ 31 CFR § 1010.380(f)(8).

³⁶ 31 CFR § 1010.380(d)(1)(i)(B). Under the proposed regulations, the power to appoint or remove a dominant minority of the company's directors would have been substantial control over a reporting company. Prop. 31 CFR § 1010.380(d)(1)(ii). The final regulations eliminated the dominant majority test. 87 Fed. Reg. 59498, 59527.

³⁷ 31 CFR § 1010.380(d)(1)(i)(C).

- the entry into significant contracts, the fulfillment or non-fulfillment of those contracts, and the termination of those contracts,
- the amendment of any substantial governance document (e.g., the articles of incorporation or similar formation documents, bylaws, or significant policies or procedures).³⁸

Other indicators. The regulations contain a catch-all provision, under which substantial control includes “any other substantial control over the reporting company.”³⁹ The regulations also identify several ways in which an individual may exercise substantial control. These include:

- representation on company’s board of directors (or similar body),
- ownership or control of a majority of the voting rights of the company,
- rights associated with any financing arrangement or interest in the company,
- control over one or more intermediary entities that exercise (either separately or collectively) substantial control over the company,
- financial or business arrangements or relationships (whether formal or informal) with other individuals or entities acting as nominees, or
- any other contract, arrangement, understanding, or relationship.⁴⁰

An individual may exercise substantial control as trustee of a trust or through a similar arrangement⁴¹ An attorney, accountant, or other third party providing ordinary, arms-length advisory or other contractual services to a reporting company ordinarily would not imbue the individual with substantial influence over a reporting company.⁴²

Ownership test

A beneficial owner generally is an individual who (directly or indirectly) owns or controls 25% or more of the reporting company’s ownership interests.⁴³ The regulations contain an expansive but non-exhaustive list of interests and arrangements that are ownership interests. In addition to the more obvious types of ownership interests—such as the voting and nonvoting stock of a corporation and the capital and profits interests of a partnership—the regulations identify other interests and arrangements that are ownership interests. For example, interests in a voting trust or a business trust are ownership interests.⁴⁵ Warrants and convertible securities likewise are ownership interests.⁴⁶ In addition, puts, calls, straddles, and other options to buy or sell an ownership interest are themselves ownership interests, unless they were created and held by a third party without the reporting company’s knowledge or involvement.⁴⁷ In some cases, debt is an ownership interest. For example, a convertible debenture is an ownership interest, and its characterization as debt is irrelevant.⁴⁸ A debt that includes an equity kicker, by which the creditor shares in cash flow or capital gains, also is an ownership interest.⁴⁹

An individual’s ownership interests of a company are measured as a percentage of the total outstanding ownership interests of the company.⁵⁰ In the case of a reporting company that’s a corporation or issues shares, an individual generally is a beneficial owner if:

- the total combined voting power of all classes of ownership interests that the individual owns is 25% or more of total outstanding voting power of all classes of ownership interests entitled to vote, or
- the total combined value of the ownership interests that the individual owns is 25% or more of the total outstanding value of all classes of ownership interests.⁵¹

³⁸ Id.

³⁹ 31 CFR § 1010.380(d)(1)(i)(D).

⁴⁰ 31 CFR § 1010.380(d)(1)(ii).

⁴¹ Id.

⁴² 87 Fed. Reg. 59498, 59527.

⁴³ 31 USC § 5336(a)(3) and 31 CFR § 1010.380(d).

⁴⁴ 31 CFR § 1010.380(d)(2)(i).

⁴⁵ 31 CFR § 1010.380(d)(2)(i)(A).

⁴⁶ 31 CFR § 1010.380(d)(2)(i)(C).

⁴⁷ 31 CFR § 1010.380(d)(2)(i)(D).

⁴⁸ 31 CFR § 1010.380(d)(2)(i)(C).

⁴⁹ 86 Fed. Reg. 69920, 69937.

⁵⁰ 31 CFR § 1010.380(d)(2)(iii).

⁵¹ 31 CFR § 1010.380(d)(2)(iii)(C). This rule applies to an entity classified as a corporation for federal income tax purposes. For example, a limited liability company generally may elect to be classified as a corporation for federal income tax purposes. See Treas. Reg. § 301.7701-3(c).

(The preamble to the final regulations refer this as a vote-or-value test.⁵²) To the extent that the individual owns options or similar interests, they are assumed to have been exercised.⁵³ In the case of a reporting company that's a partnership or issues capital or profits interests, the individual's ownership interests are the individual's capital and profit interests calculated as a percentage of the partnership's total outstanding capital and profit interests.⁵⁴ An individual who owns 25% or more of any class or type of ownership interest of a reporting company generally is a beneficial owner of the company if the individual's total ownership interest can't be determined with reasonable certainty.⁵⁵

An individual may own an ownership interest directly or indirectly through a variety of means, such as a contract, joint ownership, a nominee-type arrangement, or a trust.⁵⁶ In the case of a trust, an individual who is a trustee or otherwise has the power to dispose of the trust assets is treated as owning any ownership interest held in the trust.⁵⁷ A trust advisor or trust protector thus may be treated as owning the ownership interests held in the trust. For example, an individual who, as a distribution director or trust protector, can direct the trustee to distribute trust assets to a beneficiary would be treated as owning the ownership interests held in the trust. An individual who has a power of appointment, which allows the individual to direct trust assets to one or more persons, seemingly would also be treated as owning the ownership interests held in the trust.

A beneficiary of a trust also potentially is treated as owning the ownership interest held in the trust. An individual who, as a beneficiary, is the sole permissible recipient of trust property is treated as owning any ownership interest held in the trust.⁵⁸ Although the regulations could be clearer on this point, it seems that the focus is on who *currently* is the sole permissible

recipient and generally ignores remainder beneficiaries and anyone else would become a beneficiary in the future (e.g., upon the current beneficiary's death or upon the trust's termination). If so, a surviving spouse would be treated as owning the ownership interests held in a trust that qualified for the gift tax marital deduction or estate tax marital deduction.

An individual who, as a beneficiary, has the right to withdraw substantially all of the trust property is treated as owning the ownership interests held in trust.⁵⁹ A right to demand a distribution of substantially all of the trust property would be treated in the same manner.⁶⁰

A settlor of a trust is treated as owning the ownership interests held in trust if the settlor has the right to revoke the trust or the right to withdraw assets from the trust.⁶¹ Thus, a settlor of a revocable trust is treated as owning the ownership interests held in the trust. Less clear but seemingly likely, a settlor of an irrevocable trust is treated as owning the ownership interests held in the trust if the settlor retained the power to substitute trust assets for assets that the settlor owns. Substitution powers are common. When a settlor retains a substitution power, the trust is a grantor trust with respect to the settlor, and the settlor must report the trust's income, deductions, and credits on the settlor's personal income tax return.⁶²

Exceptions

There are five categories of individuals who are not beneficial owners. They are:

- minors,
- agents, custodians, and nominees,
- employees,
- inheritors, and
- creditors.⁶³

⁵² See 87 Fed. Reg. 59498, 59532.

⁵³ 31 CFR § 1010.380(d)(2)(iii)(A).

⁵⁴ 31 CFR § 1010.380(d)(2)(iii)(B). This rule applies to an entity classified as a partnership for federal income tax purposes.

⁵⁵ 31 CFR § 1010.380(d)(2)(iii)(D).

⁵⁶ 31 CFR § 1010.380(d)(2)(ii).

⁵⁷ 31 CFR § 1010.380(d)(2)(ii)(C)(1).

⁵⁸ 31 CFR § 1010.380(d)(2)(ii)(C)(2)(i).

⁵⁹ 31 CFR § 1010.380(d)(2)(ii)(C)(2)(ii).

⁶⁰ *Id.*

⁶¹ 31 CFR § 1010.380(d)(2)(ii)(C)(3).

⁶² IRC §§ 671 and 675(4). For a discussion of the use of irrevocable grantor trusts, see Casey Verst, *Irrevocable Grantor Trusts* (a publication of the UBS Advanced Planning Group).

⁶³ 31 CFR § 1010.380(d)(3).

Except in the case of creditors, these individuals are not beneficial owners regardless of whether they satisfy the substantial control test or the ownership test.⁶⁴

A minor is not a beneficial owner if, instead of providing information about the minor, the reporting company reports the information about the minor's parent or guardian.⁶⁵ In the case of a domestic reporting company, the laws of the jurisdiction in which the company was formed determine whether an individual is a minor.⁶⁶ In the case of a foreign reporting company, the laws of the jurisdiction in which the company was first registered determine whether an individual is a minor.⁶⁷

An agent, custodian, or nominee is not a beneficial owner.⁶⁸ FinCEN emphasized that "reporting companies must report real parties in interest who exercise control indirectly."⁶⁹

An employee of a reporting company generally is not a beneficial owner.⁷⁰ To qualify for this exception, the individual's control or influence must derive solely from the individual's employment status.⁷¹ A senior officer doesn't qualify for this exception.⁷²

An individual is not a beneficial owner if the individual only has a future interest through inheritance in a reporting company.⁷³ Once an individual inherits the ownership interest, the individual owns the ownership interest. At that point, this exception won't apply.⁷⁴ The determination of when the inheritance right transforms into an ownership interest generally is based on state law.⁷⁵ This exception doesn't apply if the individual who has a future interest through inheritance also owns (directly or indirectly) an ownership interest.

⁶⁴ Id.

⁶⁵ 31 USC § 5336(a)(3)(B)(i) and 31 CFR § 1010.380(d)(3)(i).

⁶⁶ Id.

⁶⁷ 31 CFR § 1010.380(d)(3)(i).

⁶⁸ 31 CFR § 1010.380(d)(3)(ii).

⁶⁹ 86 Fed. Reg. 69920, 69936.

⁷⁰ 31 USC § 5336(a)(3)(B)(iii) and 31 CFR § 1010.380(d)(3)(iii).

⁷¹ Id.

⁷² 31 CFR § 1010.380(d)(3)(iii).

⁷³ 31 USC § 5336(a)(3)(B)(iv) and 31 CFR § 1010.380(d)(3)(iv).

⁷⁴ 87 Fed. Reg. 59498, 59535.

⁷⁵ Id.

⁷⁶ 31 CFR § 1010.380(d)(3)(v).

⁷⁷ 87 Fed. Reg. 59498, 59535.

⁷⁸ Id.

⁷⁹ 31 CFR §§ 1010.380(e)(1) and (e)(3). The act uses the term "applicant." See 31 USC § 5336(a)(2). The regulations instead use the term "company applicant." 31 CFR § 1010.380(e).

⁸⁰ 31 CFR §§ 1010.380(e)(2) and (e)(3).

A creditor of a reporting company generally is not a beneficial owner if the individual only has a right or interest that's intended to secure the right to receive payment of a debt (more precisely, a predetermined sum of money), enhance the likelihood of repayment, or secure a loan covenant or other similar right.⁷⁶ This exception, however, doesn't apply if a term crosses the line into substantial control or ownership.⁷⁷ Whether it crosses the line is determined based on the facts and circumstances.⁷⁸

Company applicants

In the case of a domestic reporting company, a company applicant is the individual who directly files the document that forms the company or, if more than one individual is involved in the filing of the document, the individual who is primarily responsible for directing or controlling such filing.⁷⁹ In the case of a foreign reporting company, a company applicant is the individual who directly files the document that first registers the company to do business in the United States or, if more than one individual is involved in the filing of the document, the individual who is primarily responsible for directing or controlling such filing.⁸⁰

When are reports due?

A reporting company must file three types of reports:

- an initial report,
- an updated report if there's a change affecting the information previously reported, and
- a corrected report if there's incorrect information in a previously filed report.

The regulations establish the due dates for these reports.

Initial reports

A reporting company must file an initial report with FinCEN. The due date depends on whether the reporting company was created or registered before or after January 1, 2024.

Existing reporting companies

A domestic reporting company created before January 1, 2024, must file its initial report on or before January 1, 2025.⁸¹ Similarly, a foreign reporting company first registered to do business in the United States before January 1, 2024, must file its initial report on or before January 1, 2025.⁸²

New reporting companies

A domestic reporting company created on or after January 1, 2024, must file its initial report within 30 calendar days after the earlier of:

- the date on which it receives notice that its creation has become effective, or
- the date on which a secretary of state or similar office provides public notice that the company has been created.⁸³

Similarly, a foreign reporting company first registered to do business in the United States on or after January 1, 2024, must file its initial report within 30 calendar days after the earlier of:

- the date on which it receives notice that its registration has become effective, or
- the date on which a secretary of state or similar office provides public notice that the company has been registered.⁸⁴

Former exempt entities

An entity that ceases to qualify for an exemption from reporting beneficial ownership information must file its initial report within 30 days of losing its exemption.⁸⁵

Updated reports

If there is a change in the information previously reported to FinCEN, a reporting company generally must file an updated report within 30 calendar days after the change.⁸⁶ For example, a reporting company must file an updated report when there's a change of the name, date of birth, address, or unique identifying number shown on a non-expired US passport, a state-issued driver's license, or other permissible form of identification if an image of the identification document was previously reported to FinCEN.⁸⁷ A reporting company also must file an updated report when a minor child attaining the age of majority if a reporting company previously reported information about the child's parent or legal guardian.⁸⁸

A reporting company must file an updated report when a beneficial owner dies. In certain cases, however, the company isn't obligated to file an updated report until the beneficial owner's estate has been settled. If a deceased individual was a beneficial owner by reason of owning a property interest or other rights that was transferrable upon death, the reporting company must file an updated report within 30 calendar days after the estate of the deceased individual is settled.⁸⁹ If the deceased individual died testate (i.e., with a valid will), the estate is settled when there's a testamentary disposition.⁹⁰ This seemingly occurs when the property interest or other rights are distributed to a person in accordance with the deceased individual's will. For these purposes, it apparently doesn't matter where the deceased individual's estate is administered.⁹¹ If the deceased individual died intestate (i.e., without a valid will), the estate apparently is settled when the property interest or other rights are distributed to a person in accordance with the intestacy laws of a jurisdiction within the United States.⁹² Under the regulations, it's unclear whether, for these purposes, the deceased individual's estate must be administered in the

⁸¹ 31CFR § 1010.380(a)(1)(iii).

⁸² Id.

⁸³ 31 CFR § 1010.380(a)(1)(i).

⁸⁴ 31 CFR § 1010.380(a)(1)(ii).

⁸⁵ 31 CFR § 1010.380(a)(1)(iv).

⁸⁶ 31 CFR § 1010.380(a)(2)(i).

⁸⁷ 31 CFR § 1010.380(a)(2)(v).

⁸⁸ 31 CFR § 1010.380(a)(2)(iv).

⁸⁹ 31 CFR § 1010.380(a)(2)(iii).

⁹⁰ Id. The regulations refer to a "testamentary deposition." This appear to be a typographic error.

⁹¹ See 31 CFR § 1010.380(a)(2)(iii). Under this regulation, the estate of a deceased beneficial owner is settled "through the operation of the intestacy laws of a jurisdiction within the United States or through a testamentary deposition [sic]." Unlike the clause concerning intestacy, the clause concerning a testamentary disposition doesn't include the phrase "a jurisdiction within the United States."

⁹² 31 CFR § 1010.380(a)(2)(iii).

United States or may be administered outside the United States so long as the intestacy laws of a jurisdiction within the United States govern the disposition of the property interest or other rights that caused the individual to qualify as a beneficial owner. As intangible personal property, shares of corporation, membership interests in a limited liability company, or other ownership interests in a legal entity ordinarily are subject to administration where the deceased owner was domiciled.

When a reporting company files an updated report after a beneficial owner's estate has been settled, the updated report generally must identify any new beneficial owners.⁹³

Corrected reports

If a report contains information that was inaccurate at the time of filing, then the reporting company must file a corrected report within 30 calendar days after it knows or should have known that the information was inaccurate.⁹⁴

How are reports filed?

A reporting company generally would file their reports electronically.⁹⁵ FinCEN is developing the Beneficial Ownership Secure System (BOSS), a new technology system for receiving, storing, and maintaining beneficial ownership information. A company generally would file its report through an online interface. FinCEN is considering how to address circumstances in which a company is unable to file through an online interface.

What information must a reporting company report?

A reporting company must provide information about itself, each of its beneficial owners, and each of its company applicants.

Information about the reporting company

In its initial report, a reporting company must provide:

- the company's full legal name,
- any trade name that the company uses,

- in the case of a company that has a principal place of business in the United States, the street address of that place of business,
- in the case of a company that doesn't have a principal place of business in the United States, the street address of the primary location in the United States it conducts business,
- in the case of a domestic reporting company, the state or tribal jurisdiction in which the company was created,
- in the case of a foreign reporting company, the state or tribal jurisdiction in which the company was first registered, and
- the company's taxpayer identification number issued by the Internal Revenue Service (IRS) or, if it is a foreign reporting company and doesn't yet have a taxpayer identification number issued by the IRS, a tax identification number issued by a foreign jurisdiction and the name of that jurisdiction.⁹⁶

Information about the beneficial owners

For each of its beneficial owners, a reporting company may provide the beneficial owner's FinCEN identifier.⁹⁷

Alternatively, the company must provide:

- the individual's full legal name,
- the individual's date of birth,
- the individual's residential street address,
- a unique identifying number from a non-expired US passport, a state-issued driver's license, or other permissible form of identification, and
- an image of the document from which the unique identifying number was obtained.⁹⁸

In lieu of providing this information about a beneficial owner who is a minor, the reporting company may provide the information about the minor's parent or guardian.⁹⁹

Information about the company applicants

For each of its company applicants, a reporting company created or registered on or after January 1, 2024, may provide the company applicant's FinCEN identifier.¹⁰⁰

Alternatively, the company must provide:

- the individual's full legal name,

⁹³ Id.

⁹⁴ 31 CFR § 1010.380(a)(3).

⁹⁵ 87 Fed. Reg. 59498, 59508-59509.

⁹⁶ 31 CFR § 1010.380(b)(1)(i).

⁹⁷ 31 CFR § 1010.380(b)(4)(ii)(A).

⁹⁸ 31 CFR § 1010.380(b)(1)(ii).

⁹⁹ 31 CFR §§ 1010.380(b)(2)(ii) and (d)(3)(i).

¹⁰⁰ 31 CFR § 1010.380(b)(4)(ii)(A).

- the individual’s date of birth,
- if the individual filed the document creating or registering the company in the course of the individual’s business, the business street address of the individual’s business,
- if the individual didn’t file the document creating or registering the company in the course of the individual’s business, the individual’s residential street address,
- a unique identifying number from a non-expired US passport, a state-issued driver’s license, or other permissible form of identification, and
- an image of the document from which the unique identifying number was obtained.¹⁰¹

A reporting company created or registered on or after January 1, 2024, isn’t required to provide any information about any of its company applicants.¹⁰²

When do the new reporting requirements become effective?

The beneficial ownership information reporting requirements are effective January 1, 2024.¹⁰³ As discussed more fully above, a reporting company created or registered on or after January 1, 2024, must file its initial report within 30 days after its creation or registration, and a reporting company created or registered before January 1, 2024, must file its initial report on or before January 1, 2025.¹⁰⁴

¹⁰¹ 31 CFR §§ 1010.380(b)(1)(ii) and (b)(2)(iv).

¹⁰² 31 CFR § 1010.380(b)(2)(iv).

¹⁰³ 87 Fed. Reg. 59498, 59498.

¹⁰⁴ 31 CFR § 1010.380(a)(1).

About the Advanced Planning Group



The Advanced Planning Group consists of former practicing estate planning and tax attorneys with extensive private practice experience and diverse areas of specialization, including estate planning strategies, income and transfer tax planning, family office structuring, business succession planning, charitable planning and family governance.

The Advanced Planning Group provides comprehensive planning and sophisticated advice and education to ultra high net worth (UHNW) clients of the firm. The Advanced Planning Group also serves as a think tank for the firm, providing thought leadership and creating a robust intellectual capital library on estate planning, tax and related topics of interest to UHNW families.

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