



The Corporate Transparency Act: Considerations for Effectively Using the FinCEN Identifier

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The Corporate Transparency Act (CTA) is scheduled to take effect in a matter of months (on January 1, 2024). Compliance with the act's new requirements is understandably on the minds of many. In the process of counseling clients and considering the CTA's implications, a priority question rising to the forefront concerns the information that each "reporting company" must disclose about its beneficial owners and its company applicants, and in turn, those individuals' reasonable concerns about the intrusive nature of the information they soon may be obligated to share. In that regard, consideration should be given to the use of the CTA's FinCEN identifier protocol as an effective approach for reducing some of that concern.

The CTA in Brief

Reporting Company: The CTA requires certain legal entities created in or registered to do business in the United States to report beneficial ownership and, in some instances, company applicant information to the U.S. Treasury Department's Financial Crimes Enforcement Network (FinCEN).^[1] Legal entities required to report under the CTA are known as "reporting companies."^[2] Generally speaking, reporting companies will typically be smaller businesses not otherwise overseen by a regulatory authority.

Beneficial Ownership: A reporting company must submit information about its beneficial ownership. Specifically, every reporting company must provide FinCEN with certain identifying information regarding individuals who exercise "substantial control" over the company *and* also those individuals who own or control 25% or more of the entity.^[3]

Company Applicant: Legal entities created after January 1, 2024, must also submit identifying information regarding company applicants.^[4] The CTA defines a company applicant as the

individual who filed the documents to register the reporting company *and* the individual primarily responsible for directing and controlling such filing.^[5]

Identifying Information: The identifying information submitted is uniform for both beneficial owners and company applicants.^[6] A reporting company must disclose, for each beneficial owner and company applicant, the individual's name, date of birth, current and complete address,^[7] an identifying number from, for example, a driver's license or passport, and the issuing jurisdiction of the document containing the identifying number.^[8] An image of the document also must be submitted.^[9]

Given the definitions of reporting company, beneficial owner, and company applicant, it is foreseeable that an individual will be required to be identified in numerous reporting company submissions to FinCEN. For example, an individual engaged in frequent real estate transactions is likely a beneficial owner of many reporting companies. Additionally, an attorney that regularly guides clients in the creation of legal entities will become a frequent company applicant, as might a paralegal or legal assistant who makes those filings at the attorney's direction with a secretary of state. Such repeat players reasonably may be concerned about providing their identifying information to numerous reporting companies responsible for submissions to FinCEN. Privacy concerns are understandable, and data breach risks are all too real in today's world.

Moreover, once reporting companies submit information to FinCEN, the CTA requires that any changes to the reported beneficial ownership information be disclosed to FinCEN within 30 days.^[10] The possible penalties for non-disclosure range from civil fines to criminal enforcement.^[11] It takes little imagination to appreciate that beneficial owners may move to a new home address or decide to change a last name upon marriage or divorce, by way of a few examples. Communicating the amended information to all necessary reporting companies likely will become a headache and potentially may be legally consequential.

The use of the CTA's FinCEN identifier might be the solution to many of these concerns and risks.

FinCEN Identifiers

A FinCEN identifier ("identifier") is "a unique identifying number that FinCEN will issue to individuals or entities upon request."^[12] In certain instances, reporting companies may submit a beneficial owner's or company applicant's identifier in lieu of the individual's identifying information.^[13] A repeat player might find an identifier appealing. Using one can be an effective data security tool where there is "less risk in submitting personal identifiable information to FinCEN directly and exclusively than doing so indirectly through one or more individuals at one or more reporting companies."^[14] Additionally, an identifier can ease the administrative burden of reporting identifying information to numerous reporting companies.^[15]

According to FinCEN, "[a]n individual may obtain a[n] identifier by submitting to FinCEN an application containing" the required identifying information which would otherwise be included in a submission made by a reporting company.^[16] "FinCEN anticipates that initial [] identifier applications for individuals will require approximately 20 minutes" of the individual's time.^[17]

Beyond any benefit to individuals who receive identifiers, identifiers can aid reporting companies in complying with the CTA. Under FinCEN's first of three CTA Final Regulations ("[Final Regulations](#)"), a beneficial owner utilizing an identifier is responsible for keeping the identifying information associated with their identifier up to date.^[18] The shift of responsibility from reporting company to beneficial owners may reduce a reporting company's cost of compliance.^[19] For clarification, while the CTA's implementing regulations require each reporting company to continually update its beneficial owners' information as needed, the same duty to update is not imposed for company applicant disclosures—i.e., reporting companies are under no obligation to update company applicant identifying information.^[20]

New Developments

The Final Regulations include a provision that “[a] reporting company may obtain a FinCEN identifier.”^[21] However, the Final Regulations “reserved for further consideration [] provisions concerning the use of a[n] identifier” obtained by a reporting company.^[22] FinCEN has since, in Proposed Rulemaking (“PR”), indicated its now considered position. The PR reads as follows:

A reporting company may report another entity’s FinCEN identifier and full legal name in lieu of the [required information] *with respect to the beneficial owners* of the reporting company only if:

- (1) The entity has obtained a FinCEN identifier and provided that FinCEN identifier to the reporting company;
- (2) An individual is or may be a beneficial owner of the reporting company by virtue of an interest in the reporting company that the individual holds through the entity; and
- (3) The beneficial owners of the entity and of the reporting company are the same individuals.^[23]

While this portion of the PR regarding the use of FinCEN identifiers for entities may be helpful to some reporting companies, its potential benefits may be limited since the beneficial owners of both the reporting company and the entity with the identifier must be the same.

In addition to potentially reducing the cost and time of compliance for reporting companies, the PR provides data privacy and administrative relief to beneficial owners in certain instances. Moreover, the PR would also reduce the “burden for reporting companies” because “fewer pieces of information” would be required to satisfy the CTA’s reporting requirements.^[24] FinCEN received many comments on the PR and we wait for exact guidance on the use of identifiers issued to reporting companies. In that regard, Frost Brown Todd continues to track new developments from FinCEN.

The attorneys at Frost Brown Todd are well-positioned to assist clients in understanding the CTA and how FinCEN identifiers can aid in the compliance process. Should you have any questions, please contact the authors or any member of Frost Brown Todd's [Corporate Transparency Act Team](#).

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[1] 31 U.S.C. §§ 5336(b)(1)(A), (b)(2)(A). Of note, a reporting company also must submit certain information to FinCEN about itself.

[2] *Id.* at § 5336(b)(1)(A).

[3] See *id.* at § 5336(a)(3). Like so much of the CTA, there are exceptions and FinCEN's commentary suggests that additional variables are being considered for many parts of the CTA's implementing regulations.

[4] 31 C.F.R. § 1010.380(b)(2)(iv).

[5] *Id.* at § 1010.380(e).

[6] *Id.* at § 1010.380(b)(1)(ii).

[7] "In the case of a company applicant who forms or registers an entity in the course of such company applicant's business, the street address of such business" should be provided. *Id.* at § 1010.380(b)(1)(ii)(C). However, "[i]n any other case, the individual's residential street address" is required. *Id.*

[8] *Id.* at § 1010.380(b)(1)(ii).

[9] *Id.*

[10] *Id.* at § 1010.380(a)(2)(i).

[11] See *id.* at § 1010.380(g).

[12] Fin. Crimes Enf't. Network, Fact Sheet: Beneficial Ownership Information Access and Safeguards Notice of Proposed Rulemaking (NPRM) (Dec. 15, 2022).

[13] See 31 C.F.R. § 1010.380(b)(4)(ii)(A).

[14] See Beneficial Ownership Information Reporting Requirements, 87 Fed. Reg. 59498, 59577 (Sept. 30, 2022).

[15] See *id.*

[16] 31 C.F.R. § 1010.380(b)(4)(i)(A).

[\[17\]](#) Beneficial Ownership Information Reporting Requirements, 87 Fed. Reg. at 59577.

[\[18\]](#) 31 C.F.R. § 1010.380(b)(4)(iii)(A).

[\[19\]](#) See Beneficial Ownership Information Reporting Requirements, 87 Fed. Reg. at 59560.

[\[20\]](#) *Id.* at 59513.

[\[21\]](#) 31 C.F.R. § 1010.380(b)(4)(i)(B).

[\[22\]](#) Fin. Crimes Enf't. Network, Fact Sheet: Beneficial Ownership Information Access and Safeguards Notice of Proposed Rulemaking (NPRM) (Dec. 15, 2022).

[\[23\]](#) Proposed 31 CFR 1010.380(b)(4)(ii)(B) (emphasis added). The provision provides no use for entity identifiers for the reporting of company applicant information. *Id.*

[\[24\]](#) Beneficial Ownership Information Access and Safeguards, and Use of FinCEN Identifiers for Entities, 87 Fed. Reg. 77404, 77445 (proposed Dec. 16, 2022).

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