



# 46<sup>th</sup> Annual IACA Conference

May 22, 2023

# AGENDA



1. FinCEN's Mission
2. Anti-Money Laundering Act of 2020 (AMLA)
  - **Corporate Transparency Act (CTA)**
3. Beneficial Ownership Information (BOI) Reporting Overview

# FINCEN'S MISSION



1. The mission of the Financial Crimes Enforcement Network is to
  - Safeguard the financial system from illicit use,
  - Combat money laundering and its related crimes including terrorism, and
  - Promote national security through the strategic use of financial authorities and the collection, analysis, and dissemination of financial intelligence.
2. FinCEN is the primary regulator and administrator of the Bank Secrecy Act (BSA)
3. FinCEN is the Financial Intelligence Unit, or FIU, of the United States

# ANTI-MONEY LAUNDERING ACT OF 2020



- Enacted by Congress on January 1, 2021
- Includes significant reforms to the U.S. AML regime

# CORPORATE TRANSPARENCY ACT



Establishes uniform beneficial ownership reporting requirements for corporations, limited liability companies, and other similar entities formed or registered to do business in the United States.

Authorizes FinCEN to collect and share this information with authorized government authorities and financial institutions, in certain circumstances and subject to effective safeguards and controls.

Requires FinCEN to revise its existing Customer Due Diligence Rule to account for the new reporting regime.

# CTA UPDATE



- September 2022: FinCEN issued a final rule specifying beneficial ownership information (BOI) reporting requirements for reporting companies, starting **January 1, 2024**.
- December 2022: FinCEN issued a Notice of Proposed Rulemaking (NPRM) that would implement provisions of the CTA that govern the access to and protection of beneficial ownership information.
- January 2023: FinCEN issued a notice and request for comment on the form that will be used to collect beneficial ownership information required by the September 2022 beneficial ownership information final rule.
- Final access rule in process, will be issued before January 1, 2024
- Customer Due Diligence rule to be revised by 1 year after the effective date of the reporting rule (**January 1, 2025**)

# BOI REPORTING OVERVIEW



- **Reporting companies** are required to report information about the company and its **beneficial owners** to FinCEN starting January 1, 2024.
  - Existing companies have 1 year (until January 1, 2025), to report.
  - Companies created or registered on or after January 1, 2024, must report within 30 days.
- Reporting companies created or registered on or after January 1, 2024, are also required to report information about **company applicants**.

## WHO REPORTS?



**While certain types of entities are exempt, many small corporations and LLCs will likely be required to report BOI to FinCEN.**

- A key factor in determining whether a company will have to report is if the company had to file a document with a secretary of state or a similar office to create or register the company.

# WHY MIGHT YOU NOT REPORT?



## Exemptions

- Banks, credit unions, tax-exempt entities, public utilities, large companies, dormant companies

## Not Created by a Filing

- Entities that are not created or registered in the United States by the filing of a document with a secretary of state or similar office (e.g. domestic general partnerships)
- Non-entities (e.g. sole proprietorships)

## Trust Arrangements other than Statutory Trusts

- Depends on state filing requirements

## WHAT IS REPORTED?



A reporting company needs to provide information about **itself**:

- Legal name and any trade name or DBA
- U.S. Address (unless only foreign address exists)
- Jurisdiction where it was formed
- If foreign, jurisdiction where it was first registered
- Taxpayer Identification Number (TIN)

## WHAT IS REPORTED?



A reporting company needs to provide information for each of its **beneficial owners** and **company applicants**:

- Legal name
- Birthdate
- Address
- Number and issuing jurisdiction from an approved identification document.
  - The reporting company will also need to provide an image of this document.

# WHAT IS THE DIFFERENCE BETWEEN A BENEFICIAL OWNER AND A COMPANY APPLICANT?



## Beneficial Owner

- Any individual who either exercises substantial control over a company or owns or controls at least 25% of the ownership interests of the company

## Company Applicants

- The individual who directly filed the document that created or registered the company
- The individual who is primarily responsible for directing or controlling the filing of the document (if more than one person involved in filing)

## HOW WILL COMPANIES REPORT?



- Reporting companies will report BOI electronically through a secure filing system available via FinCEN's website.
  - Entity FinCEN ID applications will be available on the website.
- This system is currently being developed and will be available before the report must be filed.
  - The system will provide a confirmation of receipt.
- Beneficial ownership information **will not** be accepted prior to January 1, 2024.

# GUIDANCE MATERIALS



- FinCEN recognizes that companies in your state will have questions.
- In March 2023, FinCEN issued its first set of **guidance materials** to help businesses understand the reporting requirement.
- [www.fincen.gov/boi](https://www.fincen.gov/boi)
  - **Frequently Asked Questions** about the reporting requirement.
  - Summary of **Key Filing Dates**.
  - Summary of **Key Questions**.
  - An **Introductory Video** on BOI.
  - An **Informational Video** about the reporting requirement.

## ADDITIONAL RESOURCES



- We are working hard to publish additional guidance, including a *Small Entity Compliance Guide*, to describe the BOI reporting requirement.
- Contact FinCEN with any questions.
  - FinCEN.gov “Contact Us” page: [www.fincen.gov/contact](https://www.fincen.gov/contact).
  - Questions we receive help inform our future guidance.
- Subscribe to FinCEN News Updates to be notified when new guidance is published.



Questions?

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