

Insights: Alerts

Future Corporate Transparency Act Rules to Apply to Foreign Reporting Companies Only

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We [recently reported](#) that the Treasury Department's Financial Crimes Enforcement Network (FinCEN) announced that:

“it will not issue any fines or penalties or take any other enforcement actions against any companies based on any failure to file or update beneficial ownership information (BOI) reports pursuant to the Corporate Transparency Act by the current deadlines. No fines or penalties will be issued, and no enforcement actions will be taken, until a forthcoming interim final rule becomes effective and the new relevant due dates in the interim final rule have passed.”

As a result, the CTA's beneficial ownership reporting requirements are suspended until FinCEN promulgates new rules and a new reporting schedule.

More recently, in a short [press release](#) posted to the Treasury Department's main website (but interestingly not to FinCEN's site, where most CTA-related information is posted), it was announced that:

“with respect to the Corporate Transparency Act, not only will [the Treasury Department] not enforce any penalties or fines associated with the beneficial ownership information reporting rule under the existing regulatory deadlines, but it will further not enforce any penalties or fines against U.S. citizens or domestic reporting companies or their beneficial owners after the forthcoming rule changes take effect either. The Treasury Department will further be issuing a proposed rulemaking that will narrow the scope of the rule to foreign reporting companies only.”

Consequently, it appears that under the yet-to-be-issued new CTA rules, companies formed in the United States will not have to report their beneficial ownership to FinCEN.

Under the CTA, a foreign reporting company refers to a company formed under the law of a foreign country and registered to do business in the United States by the filing of a document with a secretary of state or a similar office. It is unknown at this time whether the new rules will include various exemptions from reporting for companies subject to the rules, as the current rules do.

The rules as described in Treasury's press release would appear to be much narrower in scope than the [CTA statute](#) passed by Congress over the president's veto in 2021.

What Should Companies Do Now?

Companies need not and should not file beneficial ownership reports with FinCEN until further notice from FinCEN. If the new rules are adopted as described in Treasury's recent press release, domestic companies will not have to file reports.

CTA Background

As we have [previously reported](#), the CTA in its original form required most privately held companies organized in the U.S. (including many non-wholly owned or controlled subsidiaries of public companies) and foreign companies that register to do business in a U.S. state to file an online report with FinCEN. Among other things, the report would have identified any individual who, directly or indirectly, exercised “substantial control” over the company or owned or controlled 25% or more of the company. These individuals are called “beneficial owners”.

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Please do not hesitate to reach out to any of our principal CTA contacts below, or to your primary Kilpatrick contact for help or further information.

Footnotes

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Related People



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