

Regs Extending Beneficial Ownership Reporting Deadline Coming

Posted on Aug. 16, 2023

By Andrew Velarde

Additional proposed regs on beneficial ownership information reporting pertaining to a deadline extension for newly created or registered companies are nearing release, but details are sparse.

According to a website entry from the Office of Information and Regulatory Affairs, OIRA received the proposed regs from Treasury's Financial Crimes Enforcement Network on August 14. OIRA review is typically one of the final steps of guidance review before release.

The entry does not offer much information beyond the title of the project, which states that the deadline extension will apply to reporting companies created or registered in 2024, leaving practitioners to ponder what the rules might do.

In September 2022 FinCEN released [final rules](#) related to the Corporate Transparency Act. Those rules addressed reporting requirements, definitions, exemptions, and [timing of reports](#). Reporting is necessary for both domestic and foreign companies and requires information such as names, addresses, and identifying numbers from the reporting entity, the beneficial owner, and the company applicant.

The final regs provide that companies created after the regs become effective have 30 days to file after receiving notice of their creation or registration. Under earlier proposed regs, the deadline was 14 days. The final regs become effective on January 1, 2024. Previously created reporting companies have until 2025 to file.

According to the preamble of the final regs, FinCEN believed that a 30-day time frame for initial reports was enough for companies "to resolve various issues after initial creation, including obtaining necessary information and identifying their beneficial owners with sufficient time to file an initial report."

FinCEN's rationale for the 30-day deadline was that "if you are setting up from scratch, from the beginning, it should be easy to identify that information," Severiano E. Ortiz of MNF Legal LLC said. "I can envision a lot of scenarios where that wouldn't be so easy."

Ortiz suggested that if a foreign trust with foreign beneficiaries, as well as entities and assets outside the United States, later sets up a U.S. entity, the filer may have to "dig through the weeds of indirect ownership." He argued that in such situations, communicating with the trustees and getting all the required information about the beneficial owners could take longer than 30 days.

Bruce Zagaris of Berliner Corcoran & Rowe LLP agreed that the new rules could add extensions to deadlines and added that the guidance might also address some criticisms about the barriers on state, local, tribal, and foreign government access to the beneficial ownership information. FinCEN may also be addressing bank and financial institution criticism about restrictions in accessing and using information, he speculated.

Critics of the final rules, including business interest groups, have argued that small businesses are not prepared for them. At a July House subcommittee hearing, a representative of the National Federation of Independent Business insisted that many small businesses are [not even aware](#) of the reporting requirements. Representatives from the Financial Accountability and Corporate Transparency Coalition and the American Bankers Association have also asked for revisions to rules to ensure financial institution access.

“The gist of these hearings is that the government is not yet in a position to effectively or efficiently process the information that it seeks to obtain. Neither is it in a position to verify such information by way of comparison to other government databases,” Ortiz said. “There is a push to delay the effective dates until such time as FinCEN is more organized, or properly funded, so as to not put small businesses in a difficult situation and to effectively process the information so it is actually useful for its [anti-money-laundering] purposes.”

The Corporate Transparency Act, which became law [in January 2021](#), targets tax fraud, terrorism financing, and money laundering by requiring corporations, limited liability companies, and similar entities to disclose information about beneficial owners to FinCEN. A second tranche of guidance on beneficial ownership pertaining to information access was released in [December 2022](#).