

New Entity Beneficial Owner Reporting Deadline Extended to 90 Days

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By Andrew Velarde

Treasury will amend beneficial ownership information (BOI) reporting rules so that entities created or registered next year will have 90 days to file initial reports, up from 30 days.

The Financial Crimes Enforcement Network released the [proposed regs](#) on September 27. The extension applies only to new entities created in 2024; entities created or registered in 2025 or later would still have 30 days to file their BOI reports as required under [final regs](#) that were released in September 2022.

According to the preamble of the proposed rules, the extension should give entities created in 2024 “additional time to understand the new reporting obligation and collect the necessary information to complete their filings.”

Both the newly proposed regs and the final rules relate to the Corporate Transparency Act. FinCEN’s final 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’ preamble states that FinCEN believed 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.” But practitioners argued that there could be [numerous scenarios](#) in which 30 days would be insufficient for entities looking to retrieve all the necessary information for reporting, including for foreign trusts with foreign beneficiaries.

Because the proposed regs went through regulatory review at the Office of Management and Budget’s Office of Information and Regulatory Affairs, practitioners knew an extension was coming. Questions remained over [how long](#) that extension would be, however. The proposed regs’ reporting extension does not go as far as putting new entities on equal footing with domestic or foreign reporting companies created or registered before the rules become effective in 2024, as those latter entities have until January 1, 2025, to file their initial BOI reports. Still, the preamble makes clear that the extension — which came about after continued discussions between the government and private sector stakeholders — should provide multiple benefits, including additional time for reporting companies to obtain the information and a longer period for FinCEN to answer questions that could arise when they complete their reports.

“FinCEN recognizes that there are many aspects of the Reporting Rule that newly created or registered entities will need to navigate, including whether the new legal entity falls under the definition of ‘reporting company’ or qualifies for an exemption, the meaning of ‘beneficial owner’

under the rule, and the application of other key terms and requirements,” the preamble states, noting that FinCEN will continue to develop simple guidance like FAQs, videos, and compliance guides.

According to the preamble, FinCEN also plans to establish a contact center before 2024 to answer companies’ questions about reporting requirements.

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 regarding information access was released in [December 2022](#).

FinCEN has estimated that in 2024 there will be 32.6 million reporting companies.

The novelty of the reporting regime is the reason FinCEN decided to extend the reporting deadline only for new entities created in 2024, the preamble states.

“For the first time, the United States is now requiring legal entities to submit beneficial ownership information to a centralized, Federal Government database, and the reporting requirements are likely to be entirely new to business owners, corporate formation professionals, secretary of state offices, and other key stakeholders. After January 1, 2025, however, FinCEN expects that the BOI reporting requirements will be more familiar to those involved in corporate formation, and newly created or registered companies should be in a better position to promptly file their BOI reports,” the preamble states.

How Much Breathing Room?

Robert Russell of Rutan & Tucker LLP said that for straightforward structures, the 90-day deadline would help, as it provides additional time for awareness of filing requirements as well as for getting practical procedures in place.

“This gives folks breathing room because no one has done this before,” Russell said.

Russell also said he was encouraged by the preamble’s mention that more guidance would be forthcoming because there are more difficult calls for some fact patterns that “don’t fit nicely into the regs.” For example, he said that questions remain over whether some entities fit into an exception from reporting, including what constitutes control for subsidiaries of companies exempt from reporting.

“For some of the gray areas, it doesn’t matter whether we got 90 days or 900 days. You’re probably going to have to have someone make a call on that,” Russell said.

Severiano E. Ortiz of MNF Legal LLC welcomed the extension but said it doesn't go far enough.

“It would seem that FinCEN believes that one year will be more than enough time for entities formed or registered before January 1, 2024, to be able to figure out how to properly comply with the

regulations," Ortiz said. "While FinCEN has started to publish guidance on its website, there are still many outstanding questions — the simplest being how to obtain a FinCEN identifier so beneficial owners and company applicants don't have to provide their personal information to every reporting company they may be associated with."

Ortiz added that FinCEN has yet to publish forms needed to identify beneficial owners and company applicants.

"With 32.6 million reporting companies, there will be a lot of questions and confusion. It's unclear at this point if FinCEN will be able to efficiently respond within the allotted filing deadlines. There is a lot to learn," Ortiz said, echoing Russell's concerns over businesses' awareness of the obligation that becomes effective on January 1, 2024. "In light of this, maybe 90 days also isn't long enough, and these newly formed or registered entities in 2025 should also be given the full year to come into compliance."