



Featured News

ALERT

FinCEN Issues Notice of Proposed Rulemaking, Potentially Requiring Companies to Disclose Identities of “Beneficial Owners”

FinCEN’s new “Beneficial Owner Disclosure Requirement” may soon apply to your company if your company is:

- (i) a privately held corporation or limited liability company, and
- (ii) employs less than twenty (20) people on a full-time basis, and
- (iii) had less than Five Million Dollars (\$5,000,000.00) in gross receipts or sales during the prior year.

If your company meets the above criteria, and if your company does not fall within at least one (1) of the exceptions to the Beneficial Owner Disclosure Requirement, it will almost certainly soon be required to disclose to the government, its “beneficial owners”.

In 2020, and as part of the Anti-Money Laundering Act of 2020, Congress passed the Corporate Transparency Act (the “CTA”). The CTA includes a requirement that all non-exempt companies that are registered to do business in the United States, disclose to the government the personal identities of those companies’ “beneficial owners” (the “Beneficial Owner Disclosure Requirement”). At the present time, the government has yet to implement the CTA’s Beneficial Owner Disclosure Requirement. Recently, however, the Financial Crimes Enforcement Network (“FinCEN”) formally requested that companies affected by the proposed Beneficial Owner Disclosure Requirement, provide written comments **on or before February 7, 2022**, regarding how the proposed rule would impact them. Proponents of the proposed rule believe that the rule will assist in combatting fraud, money laundering and other criminal activities. Opponents of the proposed rule cite it as unnecessary governmental overreach into the internal matters of private companies and individuals.

For reference, the proposed rule and FinCEN’s “Notice of Proposed Rulemaking” regarding the disclosure of beneficial owners within a company may be accessed here:

[Beneficial Ownership Information Reporting Requirements](#)

Moreover, the portal for submitting comments regarding the proposed beneficial interest rule may be submitted here:

[Regulations.gov](#)

Of note, the CTA defines the term “beneficial owners” as individuals who exercise “substantial control” over a company, either directly or indirectly, and who either own or control at least Twenty-Five Percent (25%) of the company’s aggregated ownership interest.

Under the proposed rule, the Beneficial Owner Disclosure Requirement would apply both to domestic and foreign companies registered to do business in the United States. *Domestic* companies that would be required to meet the Beneficial Owner Disclosure Requirement include corporations, limited liability companies, and/or any other entity created by the filing of a document with a secretary of state or similar office under the law of a state or Indian tribe. *Foreign* companies that are required to meet the Beneficial Owner Disclosure Requirement include corporations, limited liability companies and/or other entities that are (i) formed under the law of a foreign country, and (ii) registered to do business in any state or tribal jurisdiction within the United States. Meanwhile, a total of twenty-three (23) types of entities would be exempt from the definition of a “reporting company”; such entities, therefore, would not be required to meet the Beneficial Owner Disclosure Requirement at all. Exempt entities include, but are not limited to: public reporting companies; banks; insurance companies; companies that employ more than twenty (20) full-time employees that also report more than Five Million Dollars (\$5,000,000.00) in gross receipts or sales during the prior year and that have a



physical presence in the U.S.; and entities registered with the Securities and Exchange Commission.

In terms of a non-exempt company's deadline to comply with the Beneficial Owner Disclosure Requirement, the proposed rule holds that companies formed *on or after* the date when FinCEN's final rule becomes effective will be required to file an initial Beneficial Owner Disclosure report within 14 calendar days of the date the company is formed. For non-exempt companies formed prior to the final Beneficial Owner Disclosure Requirement, those non-exempt companies will be required to file their Beneficial Owner Disclosure report within one (1) year of the effective date of the newly-promulgated CTA regulation.

What is abundantly clear from the foregoing is that many California companies will be impacted or otherwise affected by FinCEN's newly proposed Beneficial Owner Disclosure Requirement. If you believe that you, or your company, will be impacted or affected by this new rule, if you have questions about the newly proposed rule, or if you believe that you or your business will need, or could use assistance in complying with the newly-proposed rule, please contact this office for assistance.



Author

[Mark J. Hilliard](#)
T 925.944.9700
mhilliard@brothersmithlaw.com

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2033 North Main Street, Suite 720
Walnut Creek, California 94596
T 925.944.9700 F 925.944.9701

www.brothersmithlaw.com

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