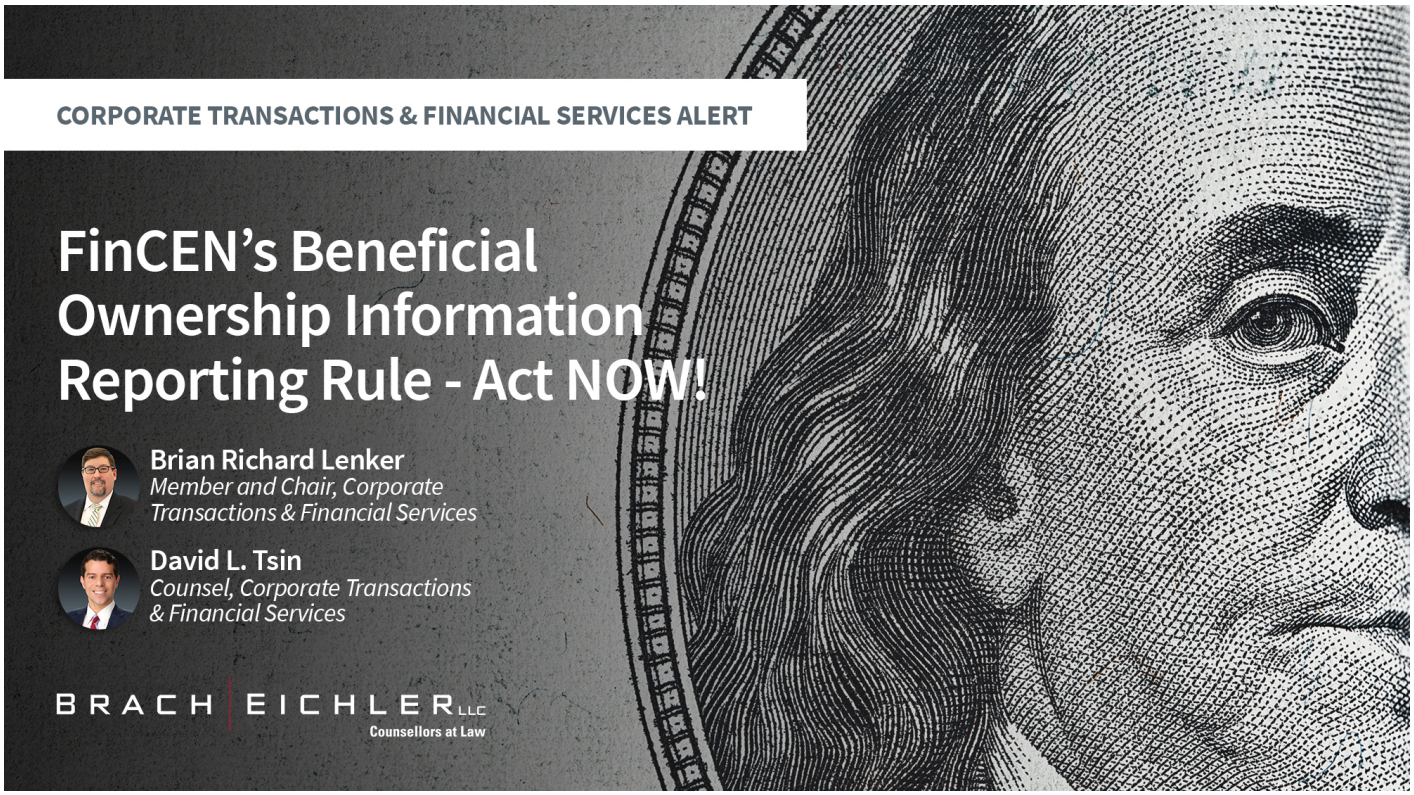
FinCEN's Beneficial Ownership Information Reporting Rule – Act NOW!



10/2/2024

The Beneficial Ownership Information Reporting Rule (31 CFR § 1010.380) (the "Rule"), promulgated by the U.S. Department of the Treasury's Financial Crimes Enforcement Network ("FinCEN") under the Corporate Transparency Act, requires reporting companies (as defined in the Rule) to file beneficial ownership information reports ("BOI reports") with FinCEN containing information about the reporting company itself and two categories of individuals: (1) beneficial owners, and (2) company applicants, each as defined in the Rule.

Reporting Companies

Subject to exemptions provided for in the Rule, reporting companies (as defined in the Rule) include (1) domestic legal entities created by the filing of a document with a secretary of state or similar office, and (2) foreign legal entities that have registered to do business in any U.S. State or Tribal jurisdiction by filing a document with a secretary of state or similar office. The Rule exempts twenty-three (23) categories of entities from the Rule's reporting requirements.

Filing Deadline for the Initial BOI Report

Reporting companies (as defined in the Rule) subject to the Rule's reporting requirements that were created in the United States before January 1, 2024, or that first registered to do business in the United States before January 1, 2024, have until **January 1, 2025** to file their initial BOI report. Reporting companies (as defined in

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the Rule) subject to the Rule's reporting requirements that are created in the United States on or after January 1, 2024 but before January 1, 2025, or that first register to do business in the United States on or after January 1, 2024 but before January 1, 2025, will have 90 days (after such creation or registration) to file their initial BOI report. Reporting companies (as defined in the Rule) subject to the Rule's reporting requirements that are created in the United States on or after January 1, 2025, or that first register to do business in the United States on or after January 1, 2025, will have 30 days (after such creation or registration) to file their initial BOI report.

BOI reports are to be filed electronically using FinCEN's secure filing system accessible via FinCEN's website (https://www.fincen.gov/boi).

Beneficial Owners

Under the Rule, a beneficial owner is any individual who, directly or indirectly, exercises substantial control (as defined in the Rule) over the reporting company, or owns or controls at least 25% of the ownership interests (as defined in the Rule) of the reporting company, unless that individual qualifies for an exception provided for in the Rule. A reporting company subject to the Rule's reporting requirements must include as part of its BOI report certain information about its beneficial owner(s).

Company Applicants

A reporting company subject to the Rule's reporting requirements is required to report information about its company applicant(s) (as defined in the Rule) only if that reporting company is a domestic reporting company created on or after January 1, 2024, or a foreign reporting company first registered to do business in the United States on or after January 1, 2024. The Rule identifies two categories of company applicants: (1) the individual who directly filed (with a secretary of state or similar office) the document that created a domestic reporting company or the document that first registered a foreign reporting company to do business in the United States, as applicable, and (2) if other than the individual described in clause (1) of this sentence, the individual primarily responsible for directing or controlling the filing of the applicable document referred to in clause (1) of this sentence.

Updated BOI Reports and Corrected BOI Reports

If there is any change to the required information about a reporting company (as defined in the Rule) itself or its beneficial owners (as defined in the Rule) that was previously reported in a BOI report for that reporting company, that reporting company must file an updated BOI report within 30 days after that change occurs.

If any information previously reported in a BOI report for a reporting company (as defined in the Rule) was inaccurate when filed and remains inaccurate, that reporting company must file a corrected BOI report within 30 days after the date that reporting company became aware of the inaccuracy or had reason to know of the inaccuracy, whichever is sooner.

Failure to Comply

The willful failure to report complete or updated beneficial ownership information to FinCEN, or the willful provision of or attempt to provide false or fraudulent beneficial ownership information, may result in civil or criminal penalties. Additionally, a person may be subject to civil and/or criminal penalties for willfully causing a company not to file a required BOI report or to report incomplete or false beneficial ownership information.

If you have any questions about this article, please contact any of the attorneys listed below or your usual Brach Eichler contact person.

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