

Corporate Transparency Act
Hellenic Law Society
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SOURCE MATERIAL

- Statute: 31 U.S.C. § 5336, added by the National Defense Authorization Act, Public Law 116-283 (January 1, 2021) § 6403.
- Regulations: 31 CFR § 1010.380 (Annex A hereto)
- FinCEN (Financial Crimes Enforcement Network, Department of the Treasury) Website: [fincen.gov/boi](https://www.fincen.gov/boi) (which includes FAQs) (frequently asked questions) regarding the CTA; and the Small Entity Compliance Guide explaining the CTA

WHO MUST FILE

- “Reporting Companies,” which include “Domestic Reporting Companies” and “Foreign Reporting Companies.”
- Domestic Reporting Companies: corporations, limited liabilities companies, and 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. 31 CFR § 1010.380(c)(1)(i).
- Foreign Reporting Company: a corporation, LLC, or other entity formed under the law of a foreign country, which is *registered* to do business in any state or tribal jurisdiction by the filing of a document with the Secretary of State or similar office in the state or with an Indian Tribe. 31 CFR § 1010.380(c)(1)(ii).
- Reporting Entities include limited partnerships but generally exclude general partnerships
 - Status of an LLP?

WHEN BOI (BENEFICIAL OWNERSHIP INFORMATION) REPORTS ARE DUE

- CTA filing requirements became effective January 1, 2024.
- Each Domestic Reporting Company and Foreign Reporting Company formed or registered to do business *prior* to January 1, 2024 has one year (until January 1, 2025) to prepare and file its initial BOI report. 31 CFR § 1010.380(a)(1)(iii).
- Each Domestic Reporting Company formed on or after January 1, 2024, and each Foreign Reporting Company that becomes such (i.e., registers to do business in a State on or *after* January 1, 2024) is to file its initial BOI Report within 90 calendar days (30 calendar days for entities formed on or after January 1, 2025) from the date it receives actual notice that its creation or registration has become effective or the date on which the Secretary of State or similar office provides public notice of such creation or registration. 31 CFR § 1010.380(a)(1).

CONTENTS OF BOI REPORTS

- For Reporting Companies: Each BOI Report is to include the following information for the Reporting Company (whether domestic or foreign):
 - The full legal name of the Reporting Company;
 - The trade name or d/b/a of the Reporting Company, if any;
 - A current address for the Reporting Company (in the case of a Reporting Company with a principal place of business in the United States, the street address of such principal place of business), and in all other cases the street address of the primary location in the United States where the Reporting Company conducts business;
 - The state or foreign jurisdiction of formation of the Reporting Company;
 - For a Foreign Reporting Company, the state where the Company first registered to do business; and
 - Its IRS Taxpayer Identification Number (including an EIN) or, if a Foreign Reporting Company that has not been issued a TIN, a tax identification number issued by a foreign jurisdiction and the name of such jurisdiction. 31 CFR § 1030.380(b)(1)(i).

CONTENTS OF BOI REPORTS (CONTINUED)

- For Beneficial Owners and Company Applicants: For every individual who is a "beneficial owner" of the Reporting Company, and for up to two (2) persons who qualify as "company applicants" with respect to the Reporting Company, the following information and documentation is required:
 - The full legal name of the individual;
 - The date of birth of the individual;
 - The complete street address of the individual unless, in the case only of a company applicant entity that is in the business of entity formation (such as CT Corporation or a law firm), the street address of such business; and
 - The unique identifying number for the beneficial owner or company applicant and the issuing jurisdiction from one of the following documents:
 - a non-expired U.S. passport issued to the individual; or
 - a non-expired identification document issued to the individual by a state or local government for the purpose of identifying the individual; or
 - a non-expired driver's license issued to the individual by a state; or

CONTENTS OF BOI REPORTS (CONTINUED)

- a non-expired passport issued by a foreign government to the individual, if the individual does not possess any of the documents described above; and
- An image of the document from which the unique identifying number identified above was obtained (i.e., the BOI report is to include, as an attachment, a scan of each of the beneficial owner's or individual company applicant's passport or other acceptable identifying document).

WHO IS A BENEFICIAL OWNER?

- An individual (not an entity) who, directly or indirectly, *either* exercises “substantial control” over the Reporting Company *or* owns or controls at least twenty-five (25%) percent of the “ownership interests” of the Reporting Company. 31 CFR § 1010.380(d).

WHAT IS SUBSTANTIAL CONTROL?

- Substantial control over a Reporting Company applies if the individual:
 - serves as a "senior officer" of the Reporting Company; or
 - has authority over the appointment or removal of any senior officer or a majority of the board of directors (or similar body); or
 - directs, determines or has substantial influence over important decisions made by the Reporting Company, including decisions regarding:
 - The nature, scope and attributes of the business of the Reporting Company including the sale, lease, mortgage or other transfer of any principal asset of the Reporting Company; or
 - The reorganization, dissolution, or merger of the Reporting Company; or
 - Major expenditures or investments, issuances of any equity, incurrence of any significant debt, or approval of the operating budget of the Reporting Company; or
 - The selection or termination of business lines or ventures, or geographic focus, of the Reporting Company; or
 - Compensation schemes and incentive programs for senior officers; or

WHAT IS SUBSTANTIAL CONTROL? (CONTINUED)

- The entry into or termination, or the fulfillment or non-fulfillment, of significant contracts; or
- Amendments of any substantial government documents of the Reporting Company, including the articles of incorporation or similar formation documents, bylaws, and significant policies or procedures; or
- The individual has any other form of substantial control over the Reporting Company.

31 CFR § 1010.380(d)(1)(i).

SENIOR OFFICERS

- “Senior officers” are deemed to exercise substantial control over a Reporting Company, and must therefore be included as beneficial owners in a BOI reports.
- Seniors officers are defined to include any individual holding the position or exercising the authority of president, chief financial officer, general counsel, chief executive officer, chief operating officer, or any other officer, regardless of official title, who performs a similar function. 31 CFR § 1010.380(f)(8).
- Note the definition of senior officer does not include the secretary.

WHAT CONSTITUTES DIRECT OR INDIRECT EXERCISE OF SUBSTANTIAL CONTROL?

- An individual may exercise substantial control, directly or indirectly, through:
 - Board representation; or
 - Ownership or control of a majority of the voting power or voting rights of the Reporting Company; or
 - Rights associated with any financing arrangement or interest in the Reporting Company; or
 - Control over one or more intermediary entities that separately or collectively exercise substantial control over the Reporting Company; or
 - Arrangements or financial or business relationships, whether formal or informal, with other individuals or entities acting as nominees; or
 - Any other contract, arrangement, understanding, relationship or otherwise.

31 CFR § 1010.380(d)(ii).

WHAT CONSTITUTES DIRECT OR INDIRECT EXERCISE OF SUBSTANTIAL CONTROL? (CONTINUED)

- As noted above (page 7), a beneficial owner for purposes of the CTA includes an *individual* who exercises “substantial control” over a Reporting Company or “owns or controls at least twenty-five (25%) percent of the “ownership interests” of the Reporting Company. 31 CFR § 1010.380(d)
- Note again that, for BOI reporting purposes, the owner of the requisite ownership interests of a Reporting Company is an individual, not an entity, so that if an entity owns an ownership interest of twenty-five percent (25%) or more of the Reporting Company, then one must look through the entity to its owners to determine whether any of them owns, indirectly, or indirectly, a twenty-five (25%) percent or greater ownership interest in the Reporting Company.

OWNERSHIP INTERESTS; TIERED STRUCTURES

- An ownership interest for CTA purposes includes an equity or stock interest in a Reporting Company, instruments convertible into equity or stock, and certain derivatives of securities with rights to acquire such equity or stock. The definition of “ownership interests” includes a catch-all provision to include in the term “any other instrument, contract, arrangement, understanding, relationship or mechanism used to establish ownership.” 31 CFR § 1010.380(d)(2)(i).
- For entities required to file BOI reports that have a simple, single tier of equity owners, where all such equity owners are individuals, the determination of beneficial owner should be straightforward. However, for multitiered ownership structures, such as typically seen in portfolio companies owned by private equity firms, the determination of the beneficial owners can be a complex undertaking that entails judgments about which individuals in the chain of ownership exercise substantial control, directly or indirectly, over the Reporting Company within the meaning of the CTA.

REPORTING COMPANY EXEMPTIONS

- The CTA regulations set forth twenty-three (23) exemptions from the definition of Reporting Company. Annex B hereto lists the twenty-three exemptions, which can be found in 31 CFR § 1010.380(c)(2). If an entity qualifies for one or more of the twenty-three exemptions, then it need not file BOI reports under the CTA.
- Two notable exemptions are for publicly traded companies and for “large operating companies.” See CFR § 1010.380(c)(2)(i) and (xxi)

OWNERSHIP INTERESTS; TIERED STRUCTURES

- Publicly traded companies are exempt from the reporting requirements of the CTA, and include issuers of a class of securities registered under the Section 12 of the Securities Exchange Act of 1934, as amended (the “Exchange Act”) and issuers that are required to file supplementary and periodic information under Section 15(d) of the Exchange Act. 31 CFR § 1010.380 (c)(2)(ii).

LARGE OPERATING COMPANY EXEMPTION

- Large operating companies are entities that:
 - Employ more than 20 full-time employees in the United State; and
 - Have an operating presence and a physical office within the United State; and
 - Have filed a Federal income tax or information return in the United States for the previous year reporting more than U.S. \$5 million in gross receipts or sales on their tax return (excluding gross receipts on sales from sources outside of the United States).
 - A newly organized corporation, LLC or other entity that meets the first two prongs of the definition of a large operating company cannot qualify for this exemption since, because it is newly organized, it will not have filed a Federal income tax or information return, and thus cannot fulfil the third prong of the test.
 - While candidates for this exemption may consolidate sales from sources within the United States with those of entities consolidated in the entity's most recent fiscal year return, they may not consolidate employee head counts across affiliated entities to fulfil the more -than-20-head count of the text. BOI FAQ L.4.

OBTAINING A FINCEN IDENTIFIER

- Individuals who are repeat filers may request a FinCEN identifier (“FinCEN ID”). To do so the applicant (and entity company applicants) must complete an application and file it electronically with FinCEN.
- If an individual has obtained a FinCEN ID and provides it to a Reporting Company, then the Reporting Company will include such FinCEN ID in its report *in lieu* of the information required for such an individual by the CTA. 31 CFR § 1010.380(b)(4)(ii).
- Benefits of using a FinCEN Identifier.


CERTIFICATION OF BOI REPORTS

- Each person filing a BOI report or application for a FinCEN ID must “certify that the report or application is true, correct, and complete.” 31 CFR § 1010.380(b).
- Under the CTA, it is unlawful for any person to willfully provide, or attempt to provide, false or fraudulent beneficial ownership information, including a false or fraudulent identifying photograph or document, to FinCEN or to willfully fail to report complete or updated beneficial ownership information to FinCEN in accordance with the CTA Regulations. 31 CFR § 1010.380(g). For this purpose, a “person” includes any individual, Reporting Company, or other entity. *Id.*
- Under the CTA, willful violations of the reporting obligations may result in civil penalties of not more than \$500 for each day the violation continues or has not been remedied (e.g., the failure to file a BOI report by the deadline for doing so), a fine of not more than \$10,000, and/or imprisonment for up to two years. 31 USC. § 5336(h)(1).

FILING BOI REPORTS WITH INCOMPLETE INFORMATION

- When FinCEN first proposed the form of BOI report in January 2023, the form of the report included, throughout, an “unknown” box for Reporting Companies to check “if you [the Reporting Company] are not able to obtain this information” See 88 FR 2760, 2764 (January 17, 2023).
- In September 2023, FinCEN revised the form of BOI report (the form currently in use). FinCEN withdrew the unknown option in the revised form of BOI report -- no such option is currently available in the form of BOI report required to be filed by Reporting Companies.
- Instead, FinCEN stated in its September 2023 that it was considering a “potential alternative implementation, which may be adopted at a later date” to address the situation of Reporting Companies that are unable to report required information for all beneficial owners of the Reporting Company. 88 FR 67443-01 at 67444.

ANNEX A: 31 CFR § 1010.380

 KeyCite Yellow Flag - Negative Treatment
Proposed Regulation

Code of Federal Regulations

Title 31. Money and Finance—Treasury

Subtitle B. Regulations Relating to Money and Finance

Chapter X. Financial Crimes Enforcement Network, Department of the Treasury (Refs & Annos)

Part 1010. General Provisions (Refs & Annos)

Subpart C. Reports Required to be Made

31 C.F.R. § 1010.380

§ 1010.380 Reports of beneficial ownership information

Effective: January 1, 2024

Currentness

<Text of section added by 87 FR 59591, effective Jan. 1, 2024.>

(a) Reports required; timing of reports—

(1) Initial report. Each reporting company shall file an initial report in the form and manner specified in paragraph (b) of this section as follows:

(i) Any domestic reporting company created on or after January 1, 2024 shall file a report within 30 calendar days of the earlier of the date on which it receives actual notice that its creation has become effective or the date on which a secretary of state or similar office first provides public notice, such as through a publicly accessible registry, that the domestic reporting company has been created.

(ii) Any entity that becomes a foreign reporting company on or after January 1, 2024 shall file a report within 30 calendar days of the earlier of the date on which it receives actual notice that it has been registered to do business or the date on which a secretary of state or similar office first provides public notice, such as through a publicly accessible registry, that the foreign reporting company has been registered to do business.

(iii) Any domestic reporting company created before January 1, 2024 and any entity that became a foreign reporting company before January 1, 2024 shall file a report not later than January 1, 2025.

(iv) Any entity that no longer meets the criteria for any exemption under paragraph (c)(2) of this section shall file a report within 30 calendar days after the date that it no longer meets the criteria for any exemption.

(2) Updated report.

(i) If there is any change with respect to required information previously submitted to FinCEN concerning a reporting company or its beneficial owners, including any change with respect to who is a beneficial owner or information reported for any particular beneficial owner, the reporting company shall file an updated report in the form and manner specified in paragraph (b)(3) of this section within 30 calendar days after the date on which such change occurs.

(ii) If a reporting company meets the criteria for any exemption under paragraph (c)(2) of this section subsequent to the filing of an initial report, this change will be deemed a change with respect to information previously submitted to FinCEN, and the entity shall file an updated report.

(iii) If an individual is a beneficial owner of a reporting company by virtue of property interests or other rights subject to transfer upon death, and such individual dies, a change with respect to required information will be deemed to occur when the estate of the deceased beneficial owner is settled, either through the operation of the intestacy laws of a jurisdiction within the United States or through a testamentary deposition. The updated report shall, to the extent appropriate, identify any new beneficial owners.

(iv) If a reporting company has reported information with respect to a parent or legal guardian of a minor child pursuant to paragraphs (b)(2)(ii) and (d)(3)(i) of this section, a change with respect to required information will be deemed to occur when the minor child attains the age of majority.

(v) With respect to an image of an identifying document required to be reported pursuant to paragraph (b)(1)(ii)(E) of this section, a change with respect to required information will be deemed to occur when the name, date of birth, address, or unique identifying number on such document changes.

(3) Corrected report. If any report under this section was inaccurate when filed and remains inaccurate, the reporting company shall file a corrected report in the form and manner specified in paragraph (b) of this section within 30 calendar days after the date on which such reporting company becomes aware or has reason to know of the inaccuracy. A corrected report filed under this paragraph (a)(3) within this 30-day period shall be deemed to satisfy 31 U.S.C. 5336(h)(3)(C)(i)(I)(bb) if filed within 90 calendar days after the date on which the inaccurate report was filed.

(b) Content, form, and manner of reports. Each report or application submitted under this section shall be filed with FinCEN in the form and manner that FinCEN shall prescribe in the forms and instructions for such report or application, and each person filing such report or application shall certify that the report or application is true, correct, and complete.

(1) Initial report. An initial report of a reporting company shall include the following information:

(i) For the reporting company:

(A) The full legal name of the reporting company;

(B) Any trade name or “doing business as” name of the reporting company;

(C) A complete current address consisting of:

(1) In the case of a reporting company with a principal place of business in the United States, the street address of such principal place of business; and

(2) In all other cases, the street address of the primary location in the United States where the reporting company conducts business;

(D) The State, Tribal, or foreign jurisdiction of formation of the reporting company;

(E) For a foreign reporting company, the State or Tribal jurisdiction where such company first registers; and

(F) The Internal Revenue Service (IRS) Taxpayer Identification Number (TIN) (including an Employer Identification Number (EIN)) of the reporting company, or where a foreign reporting company has not been issued a TIN, a tax identification number issued by a foreign jurisdiction and the name of such jurisdiction;

(ii) For every individual who is a beneficial owner of such reporting company, and every individual who is a company applicant with respect to such reporting company:

(A) The full legal name of the individual;

(B) The date of birth of the individual;

(C) A complete current address consisting of:

(1) In the case of a company applicant who forms or registers an entity in the course of such company applicant's business, the street address of such business; or

(2) In any other case, the individual's residential street address;

(D) A unique identifying number and the issuing jurisdiction from one of the following documents:

- (1) A non-expired passport issued to the individual by the United States government;
 - (2) A non-expired identification document issued to the individual by a State, local government, or Indian tribe for the purpose of identifying the individual;
 - (3) A non-expired driver's license issued to the individual by a State; or
 - (4) A non-expired passport issued by a foreign government to the individual, if the individual does not possess any of the documents described in paragraph (b)(1)(ii)(D)(1), (b)(1)(ii)(D)(2), or (b)(1)(ii)(D)(3) of this section; and
- (E) An image of the document from which the unique identifying number in paragraph (b)(1)(ii)(D) of this section was obtained.

(2) Special rules—

- (i) Reporting company owned by exempt entity. If one or more exempt entities under paragraph (c)(2) of this section has or will have a direct or indirect ownership interest in a reporting company and an individual is a beneficial owner of the reporting company exclusively by virtue of the individual's ownership interest in such exempt entities, the report may include the names of the exempt entities in lieu of the information required under paragraph (b)(1) of this section with respect to such beneficial owner.
- (ii) Minor child. If a reporting company reports the information required under paragraph (b)(1) of this section with respect to a parent or legal guardian of a minor child consistent with paragraph (d)(3)(i) of this section, then the report shall indicate that such information relates to a parent or legal guardian.
- (iii) Foreign pooled investment vehicle. If an entity would be a reporting company but for paragraph (c)(2)(xviii) of this section, and is formed under the laws of a foreign country, such entity shall be deemed a reporting company for purposes of paragraphs (a) and (b) of this section, except the report shall include the information required under paragraph (b)(1) of this section solely with respect to an individual who exercises substantial control over the entity. If more than one individual exercises substantial control over the entity, the entity shall report information with respect to the individual who has the greatest authority over the strategic management of the entity.
- (iv) Company applicant for existing companies. Notwithstanding paragraph (b)(1)(ii) of this section, if a reporting company was created or registered before January 1, 2024, the reporting company shall report that fact, but is not required to report information with respect to any company applicant.

(3) Contents of updated or corrected reports—

(i) Updated reports—in general. An updated report required to be filed pursuant to paragraph (a)(2) of this section shall reflect any change with respect to required information previously submitted to FinCEN concerning a reporting company or its beneficial owners.

(ii) Updated reports—newly exempt entities. An updated report required to be filed pursuant to paragraph (a)(2)(ii) of this section shall indicate that the filing entity is no longer a reporting company.

(iii) Corrected reports. A corrected report required to be filed pursuant to paragraph (a)(3) of this section shall correct all inaccuracies in the information previously reported to FinCEN.

(4) FinCEN identifier—

(i) Application.

(A) An individual may obtain a FinCEN identifier by submitting to FinCEN an application containing the information about the individual described in paragraph (b)(1) of this section.

(B) A reporting company may obtain a FinCEN identifier by submitting to FinCEN an application at or after the time that the entity submits an initial report required under paragraph (b)(1) of this section.

(C) Each FinCEN identifier shall be specific to each such individual or reporting company, and each such individual or reporting company (including any successor reporting company) may obtain only one FinCEN identifier.

(ii) Use of the FinCEN identifier.

(A) If an individual has obtained a FinCEN identifier and provided such FinCEN identifier to a reporting company, the reporting company may include such FinCEN identifier in its report in lieu of the information required under paragraph (b)(1) of this section with respect to such individual.

(B) [Reserved]

(iii) Updates and corrections.

(A) Any individual that has obtained a FinCEN identifier shall update or correct any information previously submitted to FinCEN in an application for such FinCEN identifier.

(1) If there is any change with respect to required information previously submitted to FinCEN in such application, the individual shall file an updated application reflecting such change within 30 calendar days after the date on which such change occurs.

(2) If any such application was inaccurate when filed and remains inaccurate, the individual shall file a corrected application correcting all inaccuracies within 30 calendar days after the date on which the individual becomes aware or has reason to know of the inaccuracy. A corrected application filed under this paragraph within this 30-day period will be deemed to satisfy 31 U.S.C. 5336(h)(3)(C)(i)(1)(bb) if filed within 90 calendar days after the date on which the inaccurate application was submitted.

(B) Any reporting company that has obtained a FinCEN identifier shall file an updated or corrected report to update or correct any information previously submitted to FinCEN. Such updated or corrected report shall be filed at the same time and in the same manner as updated or corrected reports filed under paragraph (a) of this section.

(c) Reporting company—

(1) Definition of reporting company. For purposes of this section, the term “reporting company” means either a domestic reporting company or a foreign reporting company.

(i) The term “domestic reporting company” means any entity that is:

(A) A corporation;

(B) A limited liability company; or

(C) Created by the filing of a document with a secretary of state or any similar office under the law of a State or Indian tribe.

(ii) The term “foreign reporting company” means any entity that is:

(A) A corporation, limited liability company, or other entity;

(B) Formed under the law of a foreign country; and

(C) Registered to do business in any State or tribal jurisdiction by the filing of a document with a secretary of state or any similar office under the law of a State or Indian tribe.

(2) Exemptions. Notwithstanding paragraph (c)(1) of this section, the term “reporting company” does not include:

(i) Securities reporting issuer. Any issuer of securities that is:

(A) An issuer of a class of securities registered under section 12 of the Securities Exchange Act of 1934 (15 U.S.C. 78l); or

(B) Required to file supplementary and periodic information under section 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78o(d)).

(ii) Governmental authority. Any entity that:

(A) Is established under the laws of the United States, an Indian tribe, a State, or a political subdivision of a State, or under an interstate compact between two or more States; and

(B) Exercises governmental authority on behalf of the United States or any such Indian tribe, State, or political subdivision.

(iii) Bank. Any bank, as defined in:

(A) Section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813);

(B) Section 2(a) of the Investment Company Act of 1940 (15 U.S.C. 80a-2(a)); or

(C) Section 202(a) of the Investment Advisers Act of 1940 (15 U.S.C. 80b-2(a)).

(iv) Credit union. Any Federal credit union or State credit union, as those terms are defined in section 101 of the Federal Credit Union Act (12 U.S.C. 1752).

(v) Depository institution holding company. Any bank holding company as defined in section 2 of the Bank Holding Company Act of 1956 (12 U.S.C. 1841), or any savings and loan holding company as defined in section 10(a) of the Home Owners' Loan Act (12 U.S.C. 1467a(a)).

(vi) Money services business. Any money transmitting business registered with FinCEN under 31 U.S.C. 5330, and any money services business registered with FinCEN under 31 CFR 1022.380.

(vii) Broker or dealer in securities. Any broker or dealer, as those terms are defined in section 3 of the Securities Exchange Act of 1934 (15 U.S.C. 78c), that is registered under section 15 of that Act (15 U.S.C. 78o).

(viii) Securities exchange or clearing agency. Any exchange or clearing agency, as those terms are defined in section 3 of the Securities Exchange Act of 1934 (15 U.S.C. 78c), that is registered under sections 6 or 17A of that Act (15 U.S.C. 78f, 78q-1).

(ix) Other Exchange Act registered entity. Any other entity not described in paragraph (c)(2)(i), (vii), or (viii) of this section that is registered with the Securities and Exchange Commission under the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.).

(x) Investment company or investment adviser. Any entity that is:

(A) An investment company as defined in section 3 of the Investment Company Act of 1940 (15 U.S.C. 80a-3), or is an investment adviser as defined in section 202 of the Investment Advisers Act of 1940 (15 U.S.C. 80b-2); and

(B) Registered with the Securities and Exchange Commission under the Investment Company Act of 1940 (15 U.S.C. 80a-1 et seq.) or the Investment Advisers Act of 1940 (15 U.S.C. 80b-1 et seq.).

(xi) Venture capital fund adviser. Any investment adviser that:

(A) Is described in section 203(l) of the Investment Advisers Act of 1940 (15 U.S.C. 80b-3(l)); and

(B) Has filed Item 10, Schedule A, and Schedule B of Part 1A of Form ADV, or any successor thereto, with the Securities and Exchange Commission.

(xii) Insurance company. Any insurance company as defined in section 2 of the Investment Company Act of 1940 (15 U.S.C. 80a-2).

(xiii) State-licensed insurance producer. Any entity that:

(A) Is an insurance producer that is authorized by a State and subject to supervision by the insurance commissioner or a similar official or agency of a State; and

(B) Has an operating presence at a physical office within the United States.

(xiv) Commodity Exchange Act registered entity. Any entity that:

(A) Is a registered entity as defined in section 1a of the Commodity Exchange Act (7 U.S.C. 1a); or

(B) Is:

(1) A futures commission merchant, introducing broker, swap dealer, major swap participant, commodity pool operator, or commodity trading advisor, each as defined in section 1a of the Commodity Exchange Act (7 U.S.C. 1a), or a retail foreign exchange dealer as described in section 2(c)(2)(B) of the Commodity Exchange Act (7 U.S.C. 2(c)(2)(B)); and

(2) Registered with the Commodity Futures Trading Commission under the Commodity Exchange Act.

(xv) Accounting firm. Any public accounting firm registered in accordance with section 102 of the Sarbanes–Oxley Act of 2002 (15 U.S.C. 7212).

(xvi) Public utility. Any entity that is a regulated public utility as defined in 26 U.S.C. 7701(a)(33)(A) that provides telecommunications services, electrical power, natural gas, or water and sewer services within the United States.

(xvii) Financial market utility. Any financial market utility designated by the Financial Stability Oversight Council under section 804 of the Payment, Clearing, and Settlement Supervision Act of 2010 (12 U.S.C. 5463).

(xviii) Pooled investment vehicle. Any pooled investment vehicle that is operated or advised by a person described in paragraph (c)(2)(iii), (iv), (vii), (x), or (xi) of this section.

(xix) Tax-exempt entity. Any entity that is:

(A) An organization that is described in section 501(c) of the Internal Revenue Code of 1986 (Code) (determined without regard to section 508(a) of the Code) and exempt from tax under section 501(a) of the Code, except that in the case of any such organization that ceases to be described in section 501(c) and exempt from tax under section 501(a), such organization shall be considered to continue to be described in this paragraph (c)(1)(xix)(A) for the 180-day period beginning on the date of the loss of such tax-exempt status;

(B) A political organization, as defined in section 527(e)(1) of the Code, that is exempt from tax under section 527(a) of the Code; or

(C) A trust described in paragraph (1) or (2) of section 4947(a) of the Code.

(xx) Entity assisting a tax-exempt entity. Any entity that:

(A) Operates exclusively to provide financial assistance to, or hold governance rights over, any entity described in paragraph (c)(2)(xix) of this section;

(B) Is a United States person;

(C) Is beneficially owned or controlled exclusively by one or more United States persons that are United States citizens or lawfully admitted for permanent residence; and

(D) Derives at least a majority of its funding or revenue from one or more United States persons that are United States citizens or lawfully admitted for permanent residence.

(xxi) Large operating company. Any entity that:

(A) Employs more than 20 full time employees in the United States, with “full time employee in the United States” having the meaning provided in 26 CFR 54.4980H-1(a) and 54.4980H-3, except that the term “United States” as used in 26 CFR 54.4980H-1(a) and 54.4980H-3 has the meaning provided in § 1010.100(hhh);

(B) Has an operating presence at a physical office within the United States; and

(C) Filed a Federal income tax or information return in the United States for the previous year demonstrating more than \$5,000,000 in gross receipts or sales, as reported as gross receipts or sales (net of returns and allowances) on the entity's IRS Form 1120, consolidated IRS Form 1120, IRS Form 1120-S, IRS Form 1065, or other applicable IRS form, excluding gross receipts or sales from sources outside the United States, as determined under Federal income tax principles. For an entity that is part of an affiliated group of corporations within the meaning of 26 U.S.C. 1504 that filed a consolidated return, the applicable amount shall be the amount reported on the consolidated return for such group.

(xxii) Subsidiary of certain exempt entities. Any entity whose ownership interests are controlled or wholly owned, directly or indirectly, by one or more entities described in paragraphs (c)(2)(i), (ii), (iii), (iv), (v), (vii), (viii), (ix), (x), (xi), (xii), (xiii), (xiv), (xv), (xvi), (xvii), (xix), or (xxi) of this section.

(xxiii) Inactive entity. Any entity that:

(A) Was in existence on or before January 1, 2020;

(B) Is not engaged in active business;

(C) Is not owned by a foreign person, whether directly or indirectly, wholly or partially;

(D) Has not experienced any change in ownership in the preceding twelve month period;

(E) Has not sent or received any funds in an amount greater than \$1,000, either directly or through any financial account in which the entity or any affiliate of the entity had an interest, in the preceding twelve month period; and

(F) Does not otherwise hold any kind or type of assets, whether in the United States or abroad, including any ownership interest in any corporation, limited liability company, or other similar entity.

(d) Beneficial owner. For purposes of this section, the term “beneficial owner,” with respect to a reporting company, means any individual who, directly or indirectly, either exercises substantial control over such reporting company or owns or controls at least 25 percent of the ownership interests of such reporting company.

(1) Substantial control—

(i) Definition of substantial control. An individual exercises substantial control over a reporting company if the individual:

(A) Serves as a senior officer of the reporting company;

(B) Has authority over the appointment or removal of any senior officer or a majority of the board of directors (or similar body);

(C) Directs, determines, or has substantial influence over important decisions made by the reporting company, including decisions regarding:

(1) The nature, scope, and attributes of the business of the reporting company, including the sale, lease, mortgage, or other transfer of any principal assets of the reporting company;

(2) The reorganization, dissolution, or merger of the reporting company;

(3) Major expenditures or investments, issuances of any equity, incurrence of any significant debt, or approval of the operating budget of the reporting company;

(4) The selection or termination of business lines or ventures, or geographic focus, of the reporting company;

(5) Compensation schemes and incentive programs for senior officers;

(6) The entry into or termination, or the fulfillment or non-fulfillment, of significant contracts;

(7) Amendments of any substantial governance documents of the reporting company, including the articles of incorporation or similar formation documents, bylaws, and significant policies or procedures; or

(D) Has any other form of substantial control over the reporting company.

(ii) Direct or indirect exercise of substantial control. An individual may directly or indirectly, including as a trustee of a trust or similar arrangement, exercise substantial control over a reporting company through:

(A) Board representation;

(B) Ownership or control of a majority of the voting power or voting rights of the reporting company;

(C) Rights associated with any financing arrangement or interest in a company;

(D) Control over one or more intermediary entities that separately or collectively exercise substantial control over a reporting company;

(E) Arrangements or financial or business relationships, whether formal or informal, with other individuals or entities acting as nominees; or

(F) any other contract, arrangement, understanding, relationship, or otherwise.

(2) Ownership Interests—

(i) Definition of ownership interest. The term “ownership interest” means:

(A) Any equity, stock, or similar instrument; preorganization certificate or subscription; or transferable share of, or voting trust certificate or certificate of deposit for, an equity security, interest in a joint venture, or certificate of interest in a business trust; in each such case, without regard to whether any such instrument is transferable, is classified as stock or anything similar, or confers voting power or voting rights;

(B) Any capital or profit interest in an entity;

(C) Any instrument convertible, with or without consideration, into any share or instrument described in paragraph (d)(2)(i)(A), or (B) of this section, any future on any such instrument, or any warrant or right to purchase, sell, or subscribe to a share or interest described in paragraph (d)(2)(i)(A), or (B) of this section, regardless of whether characterized as debt;

(D) Any put, call, straddle, or other option or privilege of buying or selling any of the items described in paragraph (d)(2)(i)(A), (B), or (C) of this section without being bound to do so, except to the extent that such option or privilege is created and held by a third party or third parties without the knowledge or involvement of the reporting company; or

(E) Any other instrument, contract, arrangement, understanding, relationship, or mechanism used to establish ownership.

(ii) Ownership or control of ownership interest. An individual may directly or indirectly own or control an ownership interest of a reporting company through any contract, arrangement, understanding, relationship, or otherwise, including:

(A) Joint ownership with one or more other persons of an undivided interest in such ownership interest;

(B) Through another individual acting as a nominee, intermediary, custodian, or agent on behalf of such individual;

(C) With regard to a trust or similar arrangement that holds such ownership interest:

(1) As a trustee of the trust or other individual (if any) with the authority to dispose of trust assets;

(2) As a beneficiary who:

(i) Is the sole permissible recipient of income and principal from the trust; or

(ii) Has the right to demand a distribution of or withdraw substantially all of the assets from the trust; or

(3) As a grantor or settlor who has the right to revoke the trust or otherwise withdraw the assets of the trust; or

(D) Through ownership or control of one or more intermediary entities, or ownership or control of the ownership interests of any such entities, that separately or collectively own or control ownership interests of the reporting company.

(iii) Calculation of the total ownership interests of a reporting company. In determining whether an individual owns or controls at least 25 percent of the ownership interests of a reporting company, the total ownership interests that an individual owns or controls, directly or indirectly, shall be calculated as a percentage of the total outstanding ownership interests of the reporting company as follows:

(A) Ownership interests of the individual shall be calculated at the present time, and any options or similar interests of the individual shall be treated as exercised;

(B) For reporting companies that issue capital or profit interests (including entities treated as partnerships for federal income tax purposes), the individual's ownership interests are the individual's capital and profit interests in the entity, calculated as a percentage of the total outstanding capital and profit interests of the entity;

(C) For corporations, entities treated as corporations for federal income tax purposes, and other reporting companies that issue shares of stock, the applicable percentage shall be the greater of:

(1) the total combined voting power of all classes of ownership interests of the individual as a percentage of total outstanding voting power of all classes of ownership interests entitled to vote, or

(2) the total combined value of the ownership interests of the individual as a percentage of the total outstanding value of all classes of ownership interests; and

(D) If the facts and circumstances do not permit the calculations described in either paragraph (d)(2)(iii)(B) or (C) to be performed with reasonable certainty, any individual who owns or controls 25 percent or more of any class or type of ownership interest of a reporting company shall be deemed to own or control 25 percent or more of the ownership interests of the reporting company.

(3) Exceptions. Notwithstanding any other provision of this paragraph (d), the term "beneficial owner" does not include:

(i) A minor child, as defined under the law of the State or Indian tribe in which a domestic reporting company is created or a foreign reporting company is first registered, provided the reporting company reports the required information of a parent or legal guardian of the minor child as specified in paragraph (b)(2)(ii) of this section;

(ii) An individual acting as a nominee, intermediary, custodian, or agent on behalf of another individual;

(iii) An employee of a reporting company, acting solely as an employee, whose substantial control over or economic benefits from such entity are derived solely from the employment status of the employee, provided that such person is not a senior officer as defined in paragraph (f)(8) of this section;

(iv) An individual whose only interest in a reporting company is a future interest through a right of inheritance;

(v) A creditor of a reporting company. For purposes of this paragraph (d)(3)(v), a creditor is an individual who meets the requirements of paragraph (d) of this section solely through rights or interests for the payment of a predetermined sum of money, such as a debt incurred by the reporting company, or a loan covenant or other similar right associated with such right to receive payment that is intended to secure the right to receive payment or enhance the likelihood of repayment.

(e) Company applicant. For purposes of this section, the term “company applicant” means:

(1) For a domestic reporting company, the individual who directly files the document that creates the domestic reporting company as described in paragraph (c)(1)(i) of this section;

(2) For a foreign reporting company, the individual who directly files the document that first registers the foreign reporting company as described in paragraph (c)(1)(ii) of this section; and

(3) Whether for a domestic or a foreign reporting company, the individual who is primarily responsible for directing or controlling such filing if more than one individual is involved in the filing of the document.

(f) Definitions. For purposes of this section, the following terms have the following meanings.

(1) Employee. The term “employee” has the meaning given the term in 26 CFR 54.4980H-1(a)(15).

(2) FinCEN identifier. The term “FinCEN identifier” means the unique identifying number assigned by FinCEN to an individual or reporting company under this section.

(3) Foreign person. The term “foreign person” means a person who is not a United States person.

(4) Indian tribe. The term “Indian tribe” has the meaning given the term “Indian tribe” in section 102 of the Federally Recognized Indian Tribe List Act of 1994 (25 U.S.C. 5130).

(5) Lawfully admitted for permanent residence. The term “lawfully admitted for permanent residence” has the meaning given the term in section 101(a) of the Immigration and Nationality Act (8 U.S.C. 1101(a)).

(6) Operating presence at a physical office within the United States. The term “has an operating presence at a physical office within the United States” means that an entity regularly conducts its business at a physical location in the United

States that the entity owns or leases and that is physically distinct from the place of business of any other unaffiliated entity.

(7) Pooled investment vehicle. The term “pooled investment vehicle” means:

(i) Any investment company, as defined in section 3(a) of the Investment Company Act of 1940 (15 U.S.C. 80a-3(a)); or

(ii) Any company that:

(A) Would be an investment company under that section but for the exclusion provided from that definition by paragraph (1) or (7) of section 3(c) of that Act (15 U.S.C. 80a-3(c)); and

(B) Is identified by its legal name by the applicable investment adviser in its Form ADV (or successor form) filed with the Securities and Exchange Commission or will be so identified in the next annual updating amendment to Form ADV required to be filed by the applicable investment adviser pursuant to rule 204-1 under the Investment Advisers Act of 1940 (17 CFR 275.204-1).

(8) Senior officer. The term “senior officer” means any individual holding the position or exercising the authority of a president, chief financial officer, general counsel, chief executive officer, chief operating officer, or any other officer, regardless of official title, who performs a similar function.

(9) State. The term “State” means any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, American Samoa, Guam, the United States Virgin Islands, and any other commonwealth, territory, or possession of the United States.

(10) United States person. The term “United States person” has the meaning given the term in section 7701(a)(30) of the Internal Revenue Code of 1986.

(g) Reporting violations. It shall be unlawful for any person to willfully provide, or attempt to provide, false or fraudulent beneficial ownership information, including a false or fraudulent identifying photograph or document, to FinCEN in accordance with this section, or to willfully fail to report complete or updated beneficial ownership information to FinCEN in accordance with this section. For purposes of this paragraph (g):

(1) The term “person” includes any individual, reporting company, or other entity.

(2) The term “beneficial ownership information” includes any information provided to FinCEN under this section.

(3) A person provides or attempts to provide beneficial ownership information to FinCEN if such person does so directly or indirectly, including by providing such information to another person for purposes of a report or application under this section.

(4) A person fails to report complete or updated beneficial ownership information to FinCEN if, with respect to an entity:

(i) such entity is required, pursuant to [title 31, United States Code, section 5336](#), or its implementing regulations, to report information to FinCEN;

(ii) the reporting company fails to report such information to FinCEN; and

(iii) such person either causes the failure, or is a senior officer of the entity at the time of the failure.

Credits

[[87 FR 59591](#), Sept. 30, 2022]

SOURCE: [75 FR 65812](#), Oct. 26, 2010; [80 FR 45064](#), July 29, 2015; [81 FR 18493](#), March 31, 2016; [81 FR 42505](#), June 30, 2016; [81 FR 76864](#), Nov. 4, 2016; [82 FR 51765](#), Nov. 8, 2017; [86 FR 62915](#), Nov. 15, 2021; [86 FR 72845](#), Dec. 23, 2021; [87 FR 3434](#), Jan. 24, 2022; [87 FR 59591](#), Sept. 30, 2022, unless otherwise noted.

AUTHORITY: 12 U.S.C. 1829b and 1951–1959; 31 U.S.C. 5311–5314, 5316–5336; title III, sec. 314 Pub.L. 107–56, 115 Stat. 307; sec. 701 Pub.L. 114–74, 129 Stat. 599; sec. 6403, Pub.L. 116–283, 134 Stat. 3388.

Current through Jan. 30, 2023, [88 FR 5799](#).

**ANNEX B: EXCLUSIONS FROM DEFINITION OF
REPORTING COMPANY (31 CFR § 1010.380(c)(1))**

Schedule 1

Exclusions From Definition of Reporting Company

(2) Exemptions. Notwithstanding paragraph (c)(1) of this section, the term “reporting company” does not include:

(i) Securities reporting issuer. Any issuer of securities that is:

(A) An issuer of a class of securities registered under section 12 of the Securities Exchange Act of 1934 (15 U.S.C. 78l); or

(B) Required to file supplementary and periodic information under section 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78o(d)).

(ii) Governmental authority. Any entity that:

(A) Is established under the laws of the United States, an Indian tribe, a State, or a political subdivision of a State, or under an interstate compact between two or more States; and

(B) Exercises governmental authority on behalf of the United States or any such Indian tribe, State, or political subdivision.

(iii) Bank. Any bank, as defined in:

(A) Section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813);

(B) Section 2(a) of the Investment Company Act of 1940 (15 U.S.C. 80a-2(a)); or

(C) Section 202(a) of the Investment Advisers Act of 1940 (15 U.S.C. 80b-2(a)).

(iv) Credit union. Any Federal credit union or State credit union, as those terms are defined in section 101 of the Federal Credit Union Act (12 U.S.C. 1752).

(v) Depository institution holding company. Any bank holding company as defined in section 2 of the Bank Holding Company Act of 1956 (12 U.S.C. 1841), or any savings and loan holding company as defined in section 10(a) of the Home Owners' Loan Act (12 U.S.C. 1467a(a)).

(vi) Money services business. Any money transmitting business registered with FinCEN under 31 U.S.C. 5330, and any money services business registered with FinCEN under 31 CFR 1022.380.

(vii) Broker or dealer in securities. Any broker or dealer, as those terms are defined in section 3 of the Securities Exchange Act of 1934 (15 U.S.C. 78c), that is registered under section 15 of that Act (15 U.S.C. 78o).

(viii) Securities exchange or clearing agency. Any exchange or clearing agency, as those terms are defined in section 3 of the Securities Exchange Act of 1934 (15 U.S.C. 78c), that is registered under sections 6 or 17A of that Act (15 U.S.C. 78f, 78q-1).

(ix) Other Exchange Act registered entity. Any other entity not described in paragraph (c)(2)(i), (vii), or (viii) of this section that is registered with the Securities and Exchange Commission under the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.).

(x) Investment company or investment adviser. Any entity that is:

(A) An investment company as defined in section 3 of the Investment Company Act of 1940 (15 U.S.C. 80a-3), or is an investment adviser as defined in section 202 of the Investment Advisers Act of 1940 (15 U.S.C. 80b-2); and

(B) Registered with the Securities and Exchange Commission under the Investment Company Act of 1940 (15 U.S.C. 80a-1 et seq.) or the Investment Advisers Act of 1940 (15 U.S.C. 80b-1 et seq.).

(xi) Venture capital fund adviser. Any investment adviser that:

(A) Is described in section 203(l) of the Investment Advisers Act of 1940 (15 U.S.C. 80b-3(l)); and

(B) Has filed Item 10, Schedule A, and Schedule B of Part 1A of Form ADV, or any successor thereto, with the Securities and Exchange Commission.

(xii) Insurance company. Any insurance company as defined in section 2 of the Investment Company Act of 1940 (15 U.S.C. 80a-2).

(xiii) State-licensed insurance producer. Any entity that:

(A) Is an insurance producer that is authorized by a State and subject to supervision by the insurance commissioner or a similar official or agency of a State; and

(B) Has an operating presence at a physical office within the United States.

(xiv) Commodity Exchange Act registered entity. Any entity that:

(A) Is a registered entity as defined in Section 1a of the Commodity Exchange Act (7 U.S.C. 1a); or

(B) Is:

(1) A futures commission merchant, introducing broker, swap dealer, major swap participant, commodity pool operator, or commodity trading advisor, each as defined in section 1a of the Commodity Exchange Act (7 U.S.C. 1a), or a retail foreign exchange dealer as described in section 2(c)(2)(B) of the Commodity Exchange Act (7 U.S.C. 2(c)(2)(B)); and

(2) Registered with the Commodity Futures Trading Commission under the Commodity Exchange Act.

(xv) Accounting firm. Any public accounting firm registered in accordance with section 102 of the Sarbanes–Oxley Act of 2002 (15 U.S.C. 7212).

(xvi) Public utility. Any entity that is a regulated public utility as defined in 26 U.S.C. 7701(a)(33)(A) that provides telecommunications services, electrical power, natural gas, or water and sewer services within the United States.

(xvii) Financial market utility. Any financial market utility designated by the Financial Stability Oversight Council under section 804 of the Payment, Clearing, and Settlement Supervision Act of 2010 (12 U.S.C. 5463).

(xviii) Pooled investment vehicle. Any pooled investment vehicle that is operated or advised by a person described in paragraph (c)(2)(iii), (iv), (vii), (x), or (xi) of this section.

(xix) Tax-exempt entity. Any entity that is:

(A) An organization that is described in section 501(c) of the Internal Revenue Code of 1986 (Code) (determined without regard to section 508(a) of the Code) and exempt from tax under section 501(a) of the Code, except that in the case of any such organization that ceases to be described in section 501(c) and exempt from tax under section 501(a), such organization shall be considered to continue to be described in this paragraph (c)(1)(xix)(A) for the 180–day period beginning on the date of the loss of such tax-exempt status;

(B) A political organization, as defined in section 527(e)(1) of the Code, that is exempt from tax under section 527(a) of the Code; or

(C) A trust described in paragraph (1) or (2) of section 4947(a) of the Code.

(xx) Entity assisting a tax-exempt entity. Any entity that:

(A) Operates exclusively to provide financial assistance to, or hold governance rights over, any entity described in paragraph (c)(2)(xix) of this section;

(B) Is a United States person;

(C) Is beneficially owned or controlled exclusively by one or more United States persons that are United States citizens or lawfully admitted for permanent residence; and

(D) Derives at least a majority of its funding or revenue from one or more United States persons that are United States citizens or lawfully admitted for permanent residence.

(xxi) Large operating company. Any entity that:

(A) Employs more than 20 full time employees in the United States, with “full time employee in the United States” having the meaning provided in 26 CFR 54.4980H–1(a) and 54.4980H–3, except that the term “United States” as used in 26 CFR 54.4980H–1(a) and 54.4980H–3 has the meaning provided in § 1010.100(hhh);

(B) Has an operating presence at a physical office within the United States; and

(C) Filed a Federal income tax or information return in the United States for the previous year demonstrating more than \$5,000,000 in gross receipts or sales, as reported as gross receipts or sales (net of returns and allowances) on the entity's IRS Form 1120, consolidated IRS Form 1120, IRS Form 1120-S, IRS Form 1065, or other applicable IRS form, excluding gross receipts or sales from sources outside the United States, as determined under Federal income tax principles. For an entity that is part of an affiliated group of corporations within the meaning of 26 U.S.C. 1504 that filed a consolidated return, the applicable amount shall be the amount reported on the consolidated return for such group.

(xxii) Subsidiary of certain exempt entities. Any entity whose ownership interests are controlled or wholly owned, directly or indirectly, by one or more entities described in paragraphs (c)(2)(i), (ii), (iii), (iv), (v), (vii), (viii), (ix), (x), (xi), (xii), (xiii), (xiv), (xv), (xvi), (xvii), (xix), or (xxi) of this section.

(xxiii) Inactive entity. Any entity that:

- (A) Was in existence on or before January 1, 2020;
- (B) Is not engaged in active business;
- (C) Is not owned by a foreign person, whether directly or indirectly, wholly or partially;
- (D) Has not experienced any change in ownership in the preceding twelve-month period;
- (E) Has not sent or received any funds in an amount greater than \$1,000, either directly or through any financial account in which the entity or any affiliate of the entity had an interest, in the preceding twelve-month period; and
- (F) Does not otherwise hold any kind or type of assets, whether in the United States or abroad, including any ownership interest in any corporation, limited liability company, or other similar entity.