DEPARTMENT OF THE TREASURY

Financial Crimes Enforcement Network

31 CFR Part 1010

RIN 1506–AB49

Beneficial Ownership Information Reporting Requirements

AGENCY: Financial Crimes Enforcement Network (FinCEN), Treasury.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: FinCEN is promulgating proposed regulations to require certain entities to file reports with FinCEN that identify two categories of individuals: The beneficial owners of the entity; and individuals who have filed an application with specified governmental authorities to form the entity or register it to do business. The proposed regulations would implement Section 6403 of the Corporate Transparency Act (CTA), enacted into law as part of the National Defense Authorization Act for Fiscal Year 2021 (NDAA), and describe who must file a report, what information must be provided, and when a report is due. Requiring entities to submit beneficial ownership and company applicant information to FinCEN is intended to help prevent and combat money laundering, terrorist financing, tax fraud, and other illicit activity. Once finalized, these proposed regulations will affect a large number of entities doing business in the United States. This document also invites comments from the public regarding all aspects of the proposed regulations as well as comments in response to specific questions.

DATES: Written comments on this proposed rule may be submitted on or before February 7, 2022.

ADDRESSES: Comments may be submitted by any of the following methods:

- *Federal E-rulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Refer to Docket Number FINCEN–2021–0005 and RIN 1506–AB49.
- *Mail:* Policy Division, Financial Crimes Enforcement Network, P.O. Box 39, Vienna, VA 22183. Refer to Docket Number FINCEN–2021–0005 and RIN 1506–AB49.

FOR FURTHER INFORMATION CONTACT: The FinCEN Regulatory Support Section at 1–800–767–2825 or electronically at *frc@fincen.gov.*

SUPPLEMENTARY INFORMATION:

I. Executive Summary

These proposed regulations would implement the requirement in the CTA [1] that a reporting company submit to FinCEN a report containing beneficial owner and company applicant information (together, ''beneficial ownership information'' or BOI). This proposal fulfills the statutory direction to Treasury to promulgate regulations to implement the CTA and reflects FinCEN's careful consideration of public comments received in response to an advanced notice of proposed rulemaking (the ''ANPRM'').[2] To the extent practicable, and as required by the CTA, the proposed regulations aim to minimize the burden on reporting companies and to ensure that the information collected is accurate, complete, and highly useful. More broadly, the proposed regulations are intended to protect U.S. national security, provide critical information to law enforcement, and promote financial transparency and compliance. The CTA and these proposed regulations represent the culmination of years of efforts by Congress, the Department of the Treasury (Treasury), other national security agencies, law enforcement, and other stakeholders to bolster the United States' corporate transparency framework and to address deficiencies in BOI reporting noted by the Financial Action Task Force (FATF), Congress, law enforcement, and others. The proposed regulations address: (1) Who must file; (2) when they must file; and (3) what information they must provide. Collecting this information and providing access to law enforcement, the intelligence community, and other key stakeholders will diminish the ability of malign actors to obfuscate their activities through the use of anonymous shell and front companies. The proposed regulations would also specify circumstances in which a person violates the reporting requirements.

The proposed regulations describe two distinct types of reporting companies that must file reports with FinCEN—domestic reporting companies and foreign reporting companies. Generally, under the proposed regulations, a domestic reporting company is any entity that is created by the filing of a document with a secretary of state or similar office of a jurisdiction within the United States. A foreign reporting company is any entity formed under the law of a foreign jurisdiction that is registered to do business within the United States.

The proposed regulations also describe the twenty-three specific exemptions from the definition of reporting company under the CTA. The CTA also includes an option for the Secretary of the Treasury (Secretary), with the written concurrence of the Attorney General and the Secretary of Homeland Security, to exclude by regulation additional types of entities. FinCEN does not currently propose to exempt additional types of entities beyond those specified by the CTA.

The proposed regulations describe who is a beneficial owner and who is a company applicant. A beneficial owner is any individual who meets at least one of two criteria: (1) Exercising substantial control over the reporting company; or (2) owning or controlling at least 25 percent of the ownership interest of the reporting company. The proposed regulations define the terms ''substantial control'' and ''ownership interest'' and describe rules for determining whether an individual owns or controls 25 percent of the ownership interests of a reporting company. The proposed regulations would also describe five types of individuals who the CTA exempts from the definition of beneficial owner.

The proposed regulations also describe who is a company applicant. In the case of a domestic reporting company, a company applicant is the individual who files the document that forms the entity. In the case of a foreign reporting company, a company applicant is the individual who files the document that first registers the entity to do business in the United States. The proposed regulations specify that a company applicant includes anyone who directs or controls the filing of the document by another.

Under the proposed regulations, the time at which a required report is due would depend on: (1) When the reporting company was created or registered; and (2) whether the report is an initial report, an updated report providing new information, or a report correcting erroneous information in a previous report. Domestic reporting companies created, or foreign reporting companies registered to do business in the United States, before the effective date of the final regulations would have one year from the effective date of the final regulations to file their initial

[1] The CTA is Title LXIV of the William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021, Public Law 116–283 (January 1, 2021) (the ''NDAA''). Division F of the NDAA is the Anti-Money Laundering Act of 2020, which includes the CTA. Section 6403 of the CTA, among other things, amends the Bank Secrecy Act (BSA) by adding a new Section 5336, Beneficial Ownership Information Reporting Requirements, to Subchapter II of Chapter 53 of Title 31, United States Code.

[2] 86 FR 17557 (Apr. 5, 2021).

report with FinCEN. Domestic reporting companies created, or foreign reporting companies registered to do business in the U.S. for the first time, on or after the effective date of the final regulations would be required to file their initial report with FinCEN within 14 calendar days of the date on which they are created or registered, respectively. If there is a change in the information previously reported to FinCEN under these regulations, reporting companies would have 30 calendar days to file an updated report. Finally, if a reporting company filed information that was inaccurate at the time of filing, the reporting company would have to file a corrected report within 14 calendar days of the date it knew, or should have known, that the information was inaccurate.

The proposed regulations also describe the type of information that a reporting company is required to file. First, the reporting company would have to identify itself. The proposed regulations describe the information that a reporting company must submit to FinCEN about: (1) The reporting company, and (2) each beneficial owner and company applicant. This includes, for example, the name and address of each beneficial owner and company applicant, among other things. In lieu of providing specific information about an individual, the reporting company may provide a unique identifier issued by FinCEN called a FinCEN identifier. The proposed regulations describe how to obtain a FinCEN identifier and when it may be used. The proposed regulations also describe highly useful information that reporting companies are encouraged, but not required, to provide. This additional information would support efforts by government authorities and financial institutions to prevent money laundering, terrorist financing, and other illicit activities such as tax evasion.

The CTA provides that it is unlawful for any person to willfully provide, or attempt to provide, false or fraudulent BOI to FinCEN, or to willfully fail to report complete or updated BOI to FinCEN. The proposed regulations describe persons that are subject to this provision and what acts (or failures to act) trigger a violation.

II. Scope of the NPRM

In addition to the reporting requirements addressed by this proposed rule, Section 6403 contains other requirements. Section 6403 requires FinCEN to maintain the information that it collects under the CTA in a confidential, secure, and non-public database. It further authorizes FinCEN to disclose the information to certain government agencies, domestic and foreign, for certain purposes specified in the CTA; and to financial institutions to assist them in meeting their customer due diligence requirements. All disclosures of information submitted pursuant to Section 6403 are subject to appropriate protocols to protect the security and confidentiality of the BOI. FinCEN is required to establish such protocols by rulemaking.

Section 6403 also requires that FinCEN revise its current regulation concerning customer due diligence (CDD) requirements for financial institutions at 31 CFR 1010.230 (the ''CDD Rule''). The current CDD Rule requires certain financial institutions to identify and verify the beneficial owners of legal entity customers when those customers open new accounts as part of those financial institutions' customer due diligence programs.[3]

FinCEN intends to issue three sets of rulemakings to implement the requirements of Section 6403: A rulemaking to implement the beneficial ownership information reporting requirements, a second to implement the statute's protocols for access to and disclosure of beneficial ownership information, and a third to revise the existing CDD Rule, consistent with the requirements of section 6403(d) of the CTA. In this proposed rule, however, FinCEN seeks comments only on the first—the proposed regulations that would implement the reporting requirements of Section 6403. FinCEN intends to issue proposed regulations that would implement the other aspects of section 6403 of the CTA in the future and will solicit public comments on those proposed rules through publication in the **Federal Register**.

While developing the final BOI reporting regulations, the BOI access regulations, and the revisions to the current CDD Rule, FinCEN continues to evaluate options for verification of information submitted in BOI reports.[4]

[3] *See* 31 CFR 1010.230. *See also* Final Rule: Customer Due Diligence Requirements for Financial Institutions, 81 FR 29398 (May 11, 2016) (promulgating same).

[4] In addition, pursuant to section 6502(b)(1)(C) and (D) of the NDAA, the Secretary, in consultation with the Attorney General, will conduct a study no later than two years after the effective date of the BOI reporting final rule, to evaluate the costs associated with imposing any new verification requirements on FinCEN and the resources necessary to implement any such changes.

III. Background

A. Beneficial Ownership of Entities

i. Overview and Current Status of BOI Reporting in the United States

Legal entities such as corporations, limited liability companies, partnerships, and trusts play an essential and legitimate role in the U.S. and global economies. They are used to engage in lawful business activity, raise capital, limit personal liability, generate investments, and can be engines for innovation and economic growth, among other activities. They can also be used to engage in illicit activity and launder its proceeds, and enable those who threaten U.S. national security to access and transact in the U.S. economy. Because of the ease of setting up legal entities and the minimal amount of information required to do so in most U.S. states,[5] combined with the investment opportunities the United States presents, the United States continues to be a popular jurisdiction for legal entity formation. The number of legal entities currently operating in the United States is difficult to estimate with certainty, but Congress found that more than two million corporations and limited liability companies are being formed under the laws of the states each year.[6] According to Global Financial Integrity, more public and anonymous corporations are formed in the United States than in any other jurisdiction.[7] The number of legal entities already in existence in the United States that may need to report information on themselves, their beneficial owners, and their formation or registration agents pursuant to the CTA is very likely in the tens of millions.[8]

[5] For simplicity, in the remainder of this NPRM preamble the term ''state'' means the 50 states and the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, American Samoa, Guam, the United States Virgin Islands.

[6] CTA, Section 6402(1). FinCEN's analysis estimating such entities is included in the regulatory analysis in Section VI of this NPRM.

[7] Global Financial Integrity, *The Library Card Project: The Ease of Forming Anonymous Companies in the United States,* (March 2019) (''GFI Report''), p. 1, available at *https://secureservercdn.net/50.62.198.97/34n.8bd.myftpupload.com/wp-content/uploads/2019/03/GFI-Library-Card-Project.pdf?time=1635277837.* In 2011, the World Bank assessed that 10 times more legal entities were formed in the United States than in all 41 tax haven jurisdictions combined. *See* The World Bank, UNODC, Stolen Asset Recovery Initiative, *The Puppet Masters: How the Corrupt Use Legal Structures to Hide Stolen Assets and What to Do About It* (2011), p. 93, available at *https://star.worldbank.org/sites/star/files/puppetmastersv1.pdf.*

[8] In the regulatory analysis in Section VI of this NPRM, FinCEN estimates that there will be at least

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The United States does not have a centralized or other complete aggregation of information about who owns and operates legal entities within the United States. The information about U.S. legal entities that is readily available to law enforcement is limited to the information required to be reported when the entity is formed at the state or Tribal level, unless an entity opens an account at a covered financial institution that is required to collect certain BOI pursuant to the CDD Rule. Though state- and Tribal-level entity formation laws vary, most jurisdictions do not require the identification of an entity's individual beneficial owners at the time of formation.[9] In addition, the vast majority of states require disclosure of little to no contact information or information about an entity's officers.[10]

ii. The Value of BOI and the Department of the Treasury's Efforts To Address the Lack of Transparency in Legal Entity Ownership Structures

Access to BOI reported under the CTA would significantly enhance the U.S. Government and law enforcement's ability to protect the U.S. financial system from illicit use. It would also impede malign actors from abusing legal entities to conceal proceeds from criminal acts that undermine U.S. national security, such as corruption, human smuggling, drug and arms trafficking, and terrorist financing. For example, BOI can add valuable context to financial analysis in support of law enforcement and tax investigations. It can also provide essential information to the intelligence and security professionals who work to prevent terrorists, proliferators, and those who seek to undermine our democratic institutions or threaten other core U.S. interests from raising, hiding, or moving money in the United States through anonymous shell or front companies.[11] Broadly, and critically, BOI can assist in the identification of linkages between potential illicit actors and business entities, including shell companies. Shell companies are typically non-publicly traded corporations, limited liability companies, or entities that have no physical presence beyond a mailing address and generate little to no independent economic value,[12] and often are formed without disclosing their beneficial owners. Furthermore, shell companies can be used to conduct financial transactions without disclosing their true beneficial owners' involvement.

Some of the principal authors of the CTA in the Senate and U.S. House of Representatives recently wrote to Department of the Treasury Secretary Janet L. Yellen that ''[e]ffective and timely implementation of the new BOI reporting requirement will be a dramatic step forward, strengthening U.S. national security by making it more difficult for malign actors to exploit opaque legal structures to facilitate and profit from their bad acts. . . . This means writing the rule *broadly* to include in the reporting as many corporate entities as possible while *narrowly* limiting the exemptions to the smallest possible set permitted by the law.'' [13] They went on to note that such an approach ''will address the current and evolving strategies that terrorists, criminals, and kleptocrats employ to hide and launder assets. It will also foreclose loophole options for creative criminals and their financial enablers, maximize the quality of the information collected, and prevent the evasion of BOI reporting.'' [14] The integration of BOI reported pursuant to the CTA with the current data collected under the Bank Secrecy Act (BSA),[15] and other

25 million ''reporting companies'' (entities that are required to report BOI and are not exempt) in existence when the proposed rule becomes effective.

[9] *See, e.g.,* GFI Report, pp. 4, 6. *See also* U.S. Government Accountability Office, *Company Formations: Minimal Ownership Information Is Collected and Available* (April 2006), available at *https://www.gao.gov/assets/gao-06-376.pdf.* A few jurisdictions require information about entities' beneficial owners. For example, effective January 1, 2020, the District of Columbia requires that entity registration filings ''state the names, residence and business addresses of each person whose aggregate share of direct or indirect, legal or beneficial ownership of a governance or total distributional interest of the entity:

(A) Exceeds 10%; or

(B) Does not exceed 10%; provided, that the person:

(i) Controls the financial or operational decisions of the entity; or

(ii) Has the ability to direct the day-to-day operations of the entity.''

D.C. Code sec. 29–102.01(a)(6) (2021), available at *https://code.dccouncil.us/us/dc/council/code/sections/29-102.01.*

[10] *See* U.S. Government Accountability Office, *Company Formations: Minimal Ownership Information Is Collected and Available* (April 2006), available at *https://www.gao.gov/assets/gao-06-376.pdf. See also, e.g.,* The National Association of Secretaries of State (NASS), *NASS Summary of Information Collected by States (June 2019),* available at *https://www.nass.org/sites/default/files/company%20formation/nass-business-entity-info-collected-june2019.pdf,* noting that in its review of key business entity information collected by states during the entity formation process and in annual or periodic reports, it observed that while 49 states and the District of Columbia request information on registered agent and incorporators during formation, collection of other information is less widespread. For corporation formation, only 24 states collected a principal office address; 21 states collected contact or filer information; 17 states and the District of Columbia collected information about the directors, officers, managers, or members, though NASS notes that several states specify this as optional; and one state collected ownership or control information. For limited liability company formation, 32 states and the District of Columbia collected a principal office address; 20 states collected contact or filer information; 20 states collected information about the directors, officers, managers, or members (though NASS noted this collection requirement may be optional; and 2 states collected ownership or control information. It appears more states collected information during periodic reports than formation, but ownership information remained the least reported, with 3 states and 2 states collecting such information from corporations and limited liability companies, respectively. In its 2019 state-by state analysis of incorporation requirements, the GFI found that (1) 23 states (Alaska, Arkansas, Connecticut, Indiana, Illinois, Maine, Michigan, Minnesota, Missouri, Mississippi, Montana, North Carolina, New Hampshire, New Mexico, Nevada, Oklahoma, Pennsylvania, Rhode Island, South Carolina, Texas, Virginia, Washington, and Wisconsin) and the District of Columbia do not require that a company's address be provided; (2) every state requires the name of the person who incorporated the company; (3) four states (Alaska, California, Ohio and Virginia) do not require the incorporator's address; (4) 13 states require information about a company's directors; and (5) five states require information about a company's officers either upon incorporation or within the first 90 days after incorporation. GFI Report, *supra* note 4, p. 4.

[11] A front company generates legitimate business proceeds to commingle with illicit earnings. *See* U.S. Department of the Treasury, *National Money Laundering Risk Assessment* (2018), p. 29, available at *https://home.treasury.gov/system/files/136/2018NMLRA_12-18.pdf.*

[12] FinCEN Advisory, FIN–2017–A003, ''Advisory to Financial Institutions and Real Estate Firms and Professionals,'' p. 3 (August 22, 2017), available at *https://www.fincen.gov/sites/default/files/advisory/2017-08-22/Risk%20in%20Real%20Estate%20Advisory_FINAL%20508%20Tuesday%20%28002%29.pdf.* ''Most shell companies are formed by individuals and businesses for legitimate purposes, such as to hold stock or assets of another business entity or to facilitate domestic and international currency trades, asset transfers, and corporate mergers. Shell companies can often be formed without disclosing the individuals that ultimately own or control them (*i.e.,* their beneficial owners) and can be used to conduct financial transactions without disclosing their true beneficial owners' involvement.'' *Id.* While shell companies are used for legitimate corporate structuring purposes including in mergers or acquisitions, they are also used in common financial crime schemes. *See* FinCEN, *The Role of Domestic Shell Companies in Financial Crime and Money Laundering: Limited Liability Companies* (November 2006), p. 4, available at *https://www.fincen.gov/sites/default/files/shared/LLCAssessment_FINAL.pdf.*

[13] United States Congress, Letter from Senator Sherrod Brown, Chairman of the Senate Committee on Banking, Housing and Urban Affairs, Representative Maxine Waters, Chairwoman of the House Committee on Financial Services, and Representative Carolyn B. Maloney, Chairwoman of the House Committee on Oversight and Reform, letter to Department of the Treasury Secretary Janet L. Yellen (November 3, 2021), available at *https://financialservices.house.gov/uploadedfiles/11.04_waters_brown_maloney_letter_on_cta.pdf.*

[14] *Id.*

[15] Section 6003(1) of the Anti-Money Laundering Act of 2020 defines the BSA as comprising Section 21 of the Federal Deposit Insurance Act (12 U.S.C. 1829b), Chapter 2 of Title I of Public Law 91–508 (12 U.S.C. 1951 *et seq.*), and Subchapter II of Chapter 53 of Title 31, United States Code. Congress has authorized the Secretary to administer the BSA. The Secretary has delegated to the Director of

relevant government data, is expected to improve efforts to target illicit actors and their financial activities. The collection of BOI in a centralized database accessible to U.S. Government departments and agencies, law enforcement, tax authorities, and financial institutions may also help to level the playing field for honest businesses, particularly small businesses with fewer resources, that are at a disadvantage when competing against criminals who use shell companies to evade taxes, hide their illicit wealth, and defraud employees and customers.[16]

Since 2000, the Department of the Treasury, including FinCEN, has been raising awareness about the role of shell companies, their obfuscation of beneficial owners, and their role in facilitating criminal activity.[17] In a 2006 report on the role of domestic shell companies in financial crime and money laundering, FinCEN found that shell companies enabled the movement of billions of dollars across borders by unknown beneficial owners, thereby facilitating money laundering or terrorist financing.[18] Concurrently with the issuance of the report in 2006, FinCEN published an advisory alerting financial institutions to the money laundering risks involved in providing financial services to shell companies.[19] In 2010, FinCEN, along with the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the National Credit Union Administration, the Office of the Comptroller of the Currency, the Office of Thrift Supervision, and the Securities and Exchange Commission, and in consultation with the Commodity Futures Trading Commission, issued guidance clarifying and consolidating regulatory expectations at the time for obtaining BOI for certain accounts and customer relationships.[20] The guidance noted that BOI in account relationships provides another tool for financial institutions to better understand and address money laundering and terrorist financing risks, protect themselves from criminal activity, and assist law enforcement with investigations and prosecutions.[21]

In 2006, the FATF [22] issued its Third Mutual Evaluation Report on Anti-Money Laundering and Combating the Financing of Terrorism, with respect to the United States (''2006 FATF Report''). The 2006 FATF Report highlighted the United States' lack of timely BOI available to relevant stakeholders.[23] Following this report, both the U.S. Senate and the U.S. House of Representatives introduced bipartisan legislation to establish a nationwide beneficial ownership registry. These initial beneficial ownership registry bills included the Incorporation Transparency and Law Enforcement Assistance Act, first introduced in the U.S. Senate in 2008 and in the U.S. House of Representatives in 2010.[24]

FinCEN took its first major regulatory step to collecting BOI when it initiated the CDD rulemaking process in March 2012 by issuing an advance notice of proposed rulemaking (ANPRM),[25] followed by a NPRM in August 2014.[26] FinCEN published the final CDD Rule in May 2016.[27] The CDD Rule was the culmination of years of study and consultation with industry, law enforcement, civil society organizations, and other stakeholders, on the need for financial institutions to collect BOI and the value of that information. Citing a number of examples, the preamble to the CDD Rule noted that, among other things, BOI collected by financial institutions pursuant to the CDD Rule would: (1) Assist financial investigations by law enforcement and examinations by regulators; (2) increase the ability of financial institutions, law enforcement, and the intelligence community to address threats to national security; (3) facilitate reporting and investigations in support of tax compliance; and (4) advance Treasury's broad strategy to enhance financial transparency of legal entities.[28]

In December 2016, the FATF issued another Anti-Money Laundering and Counter-Terrorist Financing Measures, United States Mutual Evaluation Report (''2016 FATF Report''), and continued to note U.S. deficiencies in the area of beneficial ownership transparency. The 2016 FATF Report identified the lack of BOI reporting requirements as one of the fundamental gaps in the U.S. anti-money laundering/countering the financing of terrorism (AML/CFT)

FinCEN the authority to implement, administer, and enforce compliance with the BSA and associated regulations (Treasury Order 180–01 (Jan. 14, 2020)).

[16] FinCEN, Prepared Remarks of FinCEN Director Kenneth A. Blanco, delivered at the Federal Identity (FedID) Forum and Exposition, *Identity: Attack Surface and a Key to Countering Illicit Finance,* noting also that ''[f]or many of the companies here today—those that are developing or dealing with sensitive technologies—understanding who may want to invest in your ventures, or who is competing with you in the marketplace, would allow for better, safer decisions to protect intellectual property.'' (September 24, 2019). *https://www.fincen.gov/news/speeches/prepared-remarks-fincen-director-kenneth-blanco-delivered-federal-identity-fedid.*

[17] *See, e.g.,* Suspicious Activity (SAR) Report Review Issue #1 (October 2000) (noting that SARS filed in 2000 reflected suspicious wire transfer patterns involving shell companies that lacked legitimate business purposes and that were being used to transfer large amounts of funds), p. 11. *https://www.fincen.gov/sites/default/files/shared/sar_tti_01.pdf.*

[18] FinCEN, *The Role of Domestic Shell Companies in Financial Crime and Money Laundering: Limited Liability Companies* (November 2006), available at *https://www.fincen.gov/sites/default/files/shared/LLCAssessment_FINAL.pdf.*

[19] FinCEN, *Potential Money Laundering Risks Associated with Shell Companies* (November 2006), available at *https://www.fincen.gov/resources/statutes-regulations/guidance/potential-money-laundering-risks-related-shell-companies.*

[20] FinCEN, FIN–2010–G001, *Guidance on Retaining and Obtaining Beneficial Ownership Information* (March 5, 2010), available at *https://www.fincen.gov/resources/statutes-regulations/guidance/guidance-obtaining-and-retaining-beneficial-ownership.* The CDD Rule and subsequent guidance and examination guidelines have superseded the 2010 beneficial ownership guidance.

[21] *Id.,* noting that ''[h]eightened risks can arise with respect to beneficial owners of accounts because nominal account holders can enable individuals and business entities to conceal the identity of the true owner of assets or property derived from or associated with criminal activity. Moreover, criminals, money launderers, tax evaders, and terrorists may exploit the privacy and confidentiality surrounding some business entities, including shell companies and other vehicles designed to conceal the nature and purpose of illicit transactions and the identities of the persons associated with them.''

[22] The FATF, of which the United States is a founding member, is an international, inter-governmental task force whose purpose is the development and promotion of international standards and the effective implementation of legal, regulatory, and operational measures to combat money laundering, terrorist financing, the financing of proliferation, and other related threats to the integrity of the international financial system. The FATF assesses over 200 jurisdictions against its minimum standards for beneficial ownership transparency. Among other things, it has established standards on transparency and beneficial ownership of legal persons, so as to deter and prevent the misuse of corporate vehicles. *See* FATF Recommendation 24, Transparency and Beneficial Ownership of Legal Persons, The FATF Recommendations: International Standards on Combating Money Laundering and the Financing of Terrorism and Proliferation (updated October 2020), available at *https://www.fatf-gafi.org/publications/fatfrecommendations/documents/fatf-recommendations.html;* FATF Guidance, Transparency and Beneficial Ownership, Part III (October 2014), available at *https://www.fatf-gafi.org/media/fatf/documents/reports/Guidance-transparency-beneficial-ownership.pdf.*

[23] Third Mutual Evaluation Report on Anti-Money Laundering and Combating the Financing of Terrorism, United States (2006), p. 237–239, 299, 302, 305, 308 available at *https://www.fatf-gafi.org/media/fatf/documents/reports/mer/MER%20US%20full.pdf.*

[24] Incorporation Transparency and Law Enforcement Assistance Act, S. 2956 110th Cong. (2008), available at *https://www.congress.gov/110/bills/s2956/BILLS-110s2956is.pdf;* Incorporation Transparency and Law Enforcement Assistance Act, H.R. 6098 111th Cong. (2010).

[25] 77 FR 13046 (March 5, 2012).

[26] 79 FR 45151 (August 4, 2014).

[27] 81 FR 29397 (May 11, 2016).

[28] 81 FR 29399–29402.

regime.[29] The 2016 FATF Report also observed that ''the relative ease with which U.S. corporations can be established, their opaqueness and their perceived global credibility makes them attractive to abuse for [money laundering and terrorism financing], domestically as well as internationally.'' [30] The Assistant Attorney General of the Criminal Division and Acting Assistant Attorney General of the National Security Division at the Department of Justice issued a statement following the publication of the 2016 FATF Report stating that ''[f]ull transparency of corporate ownership would strengthen our ability to trace illicit financial flows in a timely fashion and firmly declare that the United States will not be a safe haven for criminals and terrorists looking to disguise their identities for nefarious purposes.'' [31]

While the CDD Rule increased transparency by requiring the collection of BOI by covered financial institutions at the time of an account opening, the Rule did not address the collection of BOI at the time of a legal entity's formation. Following the issuance of the 2016 FATF Report, Treasury and Department of Justice officials remained committed to working with Congress on beneficial ownership legislation that would require companies to report adequate, accurate, and current beneficial ownership information at the time of a company's formation. In addition, between the initial 2008 Incorporation Transparency and Law Enforcement Assistance Act [32] and the 2016 FATF Report, bipartisan beneficial ownership registry legislation continued to be introduced in each Congress. The introduction of the Corporate Transparency Act of 2017 in June 2017 (in the U.S. House of Representatives) and August 2017 (in the U.S. Senate) [33] followed the 2016 FATF Report. In November 2017, testimony at a Senate Judiciary Committee hearing, Deputy Assistant Secretary of the Treasury Jennifer Fowler, head of the U.S. FATF delegation during the 2016 FATF Report, highlighted the significant vulnerability identified by FATF, noting that ''this has permitted criminals to shield their true identities when forming companies and accessing our financial system.'' She also remarked that, while Treasury's CDD Rule was an important step forward, more remained to be done working with Congress to find a solution to collecting BOI.[34]

Over the years, Treasury and Department of Justice officials repeatedly and publicly articulated the need for the United States to enhance and improve authorities to collect BOI. In February 2018, Acting Deputy Assistant Attorney General M. Kendall Day testified at a Senate Judiciary Committee hearing on beneficial ownership reporting that ''[t]he pervasive use of front companies, shell companies, nominees, or other means to conceal the true beneficial owners of assets is one of the greatest loopholes in this country's AML regime.'' [35] In December 2019, FinCEN Director Kenneth Blanco noted that ''[t]he lack of a requirement to collect information about who really owns and controls a business and its assets at company formation is a dangerous and widening gap in our national security apparatus.'' [36] He also highlighted how this gap has been addressed in part through the CDD Rule and how much more work needed to be done, stating that ''[t]he next critical step to closing this national security gap is collecting beneficial ownership information at the corporate formation stage. If beneficial ownership information were required at company formation, it would be harder and more costly for criminals, kleptocrats, and terrorists to hide their bad acts, and for foreign states to avoid detection and scrutiny. This would help deter bad actors accessing our financial system in the first place, denying them the ability to profit and benefit from its power while threatening our national security and putting people at risk.'' [37]

Continuing its analysis of the use of shell and front companies to hide ill-gotten gains, in its 2018 National Money Laundering Risk Assessment, and in its 2018 and 2020 National Strategies for Combating Terrorist and Other Illicit Financing (''2018 Illicit Financing Strategy'' and ''2020 Illicit Financing Strategy,'' respectively), the Department of the Treasury discussed the money laundering risks inherent in the United States' lack of a comprehensive beneficial ownership reporting regime.[38] In the 2018 National Money Laundering Risk Assessment, Treasury highlighted a number of cases where shell and front companies were used in the United States to disguise funds generated in Medicare and Medicaid fraud, trade-based money laundering, or drug trafficking, among other crimes.[39] In the 2018 Illicit Financing Strategy, Treasury flagged the use of shell companies by Russian organized crime groups in the United States, as well as the Iranian Government's use of shell companies to obfuscate the source of funds and its role as it tried to generate revenue.[40] The 2020 Illicit Financing Strategy cited the lack of a requirement to collect BOI at the time of company formation and after changes in ownership as one of the most significant vulnerabilities of the U.S. financial system.[41]

Most recently, Congress enacted the Anti-Money Laundering Act of 2020 (the ''AML Act''), of which the CTA is a part.[42] Congress explained that among

[29] *See* FATF, Anti-Money Laundering and Counter-Terrorist Financing Measures United States Mutual Evaluation Report (2016), p. 4 (key findings) and Ch. 7., available at *https://www.fatf-gafi.org/media/fatf/documents/reports/mer4/MER-United-States-2016.pdf.*

[30] *Id.,* p. 153.

[31] U.S. Department of Justice, Assistant Attorney General Leslie Caldwell of the Criminal Division and Acting Assistant Attorney General Mary McCord of the National Security Division, *Financial Action Task Force Report Recognizes U.S. Anti-Money Laundering and Counter-Terrorist Financing Leadership, but Action is Needed on Beneficial Ownership,* (December 1, 2016), available at *https://www.justice.gov/archives/opa/blog/financial-action-task-force-report-recognizes-us-anti-money-laundering-and-counter.*

[32] *See supra* note 23.

[33] Corporate Transparency Act of 2017, H.R. 3089 115th Cong. (2017); Corporate Transparency Act of 2017, S. 1717 115th Cong. (2017).

[34] U.S. Department of the Treasury, *Testimony of Jennifer Fowler, Deputy Assistant Secretary Office of Terrorist Financing and Financial Crimes, Senate Judiciary Committee* (November 28, 2017), available at *https://www.judiciary.senate.gov/imo/media/doc/Fowler%20Testimony.pdf.*

[35] U.S. Department of Justice, *Statement of M. Kendall Day, Acting Deputy Assistant Attorney General, Criminal Division, U.S. Department of Justice, Before the Committee on the Judiciary, United States Senate, for a Hearing Entitled* ''*Beneficial Ownership: Fighting Illicit International Financial Networks Through Transparency,*'' presented February 6, 2018, p. 3, available at *https://www.judiciary.senate.gov/imo/media/doc/02-06-18%20Day%20Testimony.pdf.*

[36] FinCEN, *Prepared Remarks of FinCEN Director Kenneth A. Blanco, delivered at the American Bankers Association/American Bar Association Financial Crimes Enforcement Conference,* (December 10, 2019), available at *https://www.fincen.gov/news/speeches/prepared-remarks-fincen-director-kenneth-blanco-delivered-american-bankers.*

[37] *Id.*

[38] *See e.g., id.,* p. 28, and U.S. Department of the Treasury, *National Strategy for Combating Terrorist and Other Illicit Financing* (2020) (''2020 Illicit Financing Strategy''), pp. 13–14, 27, 34, available at *https://home.treasury.gov/system/files/136/National-Strategy-to-Counter-Illicit-Financev2.pdf.*

[39] U.S. Department of the Treasury, *National Money Laundering Risk Assessment* (2018), pp. 28–30, available at *https://home.treasury.gov/system/files/136/2018NMLRA_12-18.pdf.*

[40] U.S. Department of the Treasury, *National Strategy for Combating Terrorist and Other Illicit Financing* (2018), pp. 20, 47, available at *https://home.treasury.gov/system/files/136/nationalstrategyforcombatingterroristandotherillicitfinancing.pdf.*

[41] 2020 Illicit Financing Strategy, *supra* note 35, p. 12, available at *https://home.treasury.gov/system/files/136/National-Strategy-to-Counter-Illicit-Financev2.pdf.*

[42] The Anti-Money Laundering Act of 2020 was enacted as Division F, §§ 6001–6511, of the William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021, Public Law 116–283 (2021).

other purposes, the AML Act was meant to ''improve transparency for national security, intelligence, and law enforcement agencies and financial institutions concerning corporate structures and insight into the flow of illicit funds through those structures'' and ''discourage the use of shell corporations as a tool to disguise and move illicit funds.'' [43] As part of its ongoing efforts to implement the AML Act, FinCEN published in June 2021 the first national AML/CFT priorities, further highlighting the use of shell companies by human traffickers, smugglers, and weapons proliferators, among others, to generate revenues and transfer funds in support of illicit conduct.[44]

iii. National Security and Law Enforcement Implications of Legal Entities With Anonymous Beneficial Owners

While many legal entities are used for legitimate purposes, they can also be misused, as highlighted above and as Congress recognized in the CTA.[45] Corrupt actors and their financial facilitators, as a general matter, take advantage of the administrative ease of entity formation, the low cost, and the lack of information needed to establish such structures in the United States. Those actors then use the resulting anonymity and perceived legitimacy afforded to legal entities, such as shell companies, to disguise and convert the proceeds of crime before introducing them into the financial system. For example, such legal entities are used to: (1) Obscure the proceeds of bribery and large-scale corruption, money laundering, narcotics offenses, terrorist or proliferation financing, and human trafficking; (2) disguise efforts to undermine the integrity of U.S. elections and institutions; and (3) conduct other threatening and illegal activities. The ability of malign actors to hide behind opaque corporate structures, including anonymous shell and front companies, and to generate funding to finance their illicit activities continues to be a significant threat to the national security of the United States. The lack of a centralized BOI repository accessible to law enforcement and the intelligence community not only erodes the safety and security of our nation, but also undermines the U.S. Government's ability to address these threats to the United States.

In the United States, the deliberate misuse of legal entities, including corporations and limited liability companies, continues to significantly enable money laundering and other illicit financial activity and national security threats. Treasury noted in its 2020 Illicit Financing Strategy that ''[m]isuse of legal entities to hide a criminal beneficial owner or illegal source of funds continues to be a common, if not the dominant, feature of illicit finance schemes, especially those involving money laundering, predicate offences, tax evasion, and proliferation financing . . . A Treasury study based on a statistically significant sample of adjudicated IRS cases from 2016–2019 found legal entities were used in a substantial proportion of the reviewed cases to perpetrate tax evasion and fraud. According to federal prosecutors and law enforcement, large-scale schemes that generate substantial proceeds for perpetrators and smaller white-collar cases alike routinely involve shell companies, either in the underlying criminal activity or subsequent laundering.'' [46] The Drug Enforcement Administration also recently highlighted that drug trafficking organizations (DTOs) use shell and front companies to commingle illicit drug proceeds with legitimate revenue of front companies, thereby enabling the DTOs to launder their drug proceeds.[47]

Recently, in a joint Federal Bureau of Investigation (FBI) and Internal Revenue Service—Criminal Investigations (IRS–CI) investigation, the Department of Justice filed civil forfeiture complaints aggregating to $1.7 billion under the Kleptocracy Asset Recovery Initiative related to the 1Malaysia Development Berhad (1MDB) investigation. From 2009 through 2015, more than $4.5 billion in funds belonging to 1MDB was allegedly misappropriated by high-level officials of 1MDB and their associates. 1MDB was created by the Government of Malaysia to promote economic development in Malaysia through global partnerships and foreign direct investment, and the associated funds were intended to be used for improving the well-being of the Malaysian people. However, using fraudulent documents and representations, the co-conspirators allegedly laundered the funds through a series of complex transactions and shell companies with bank accounts located in the United States and abroad. These transactions allegedly served to conceal the origin, source and ownership of the funds, and ultimately passed through U.S. financial institutions to then be used to acquire and invest in assets located in the United States and overseas. Included in the forfeiture were multiple luxury properties in New York City, Los Angeles, Beverly Hills, and London, mostly titled in the name of shell companies, as well as paintings by Van Gogh, Monet, Picasso, a yacht, several items of extravagant jewelry, and numerous other items of personal property. The investigation into the location and holders of the assets associated with the alleged 1MDB scheme was made much more difficult by the shell companies with connections in foreign destinations.[48]

Shell companies also are used to evade sanctions imposed by the U.S. Government, thereby endangering U.S. national security. In a 2020 bipartisan report, the Senate Permanent Subcommittee on Investigations detailed, for example, how after Treasury's Office of Foreign Assets Control (OFAC) had sanctioned certain Russian oligarchs in connection with Russia's annexation of Crimea and for supporting Russian President Vladimir Putin,[49] those sanctioned oligarchs used shell companies to engage in a total of $91 million in transactions, and to purchase $18 million dollars in high-value art in the United States.[50] In a

[43] *Id.,* Section 6002(5)(A)–(B).

[44] FinCEN, *Anti-Money Laundering and Countering the Financing of Terrorism Priorities* (June 30, 2021), pp. 11–12, available at *https://www.fincen.gov/sites/default/files/shared/AML_CFT%20Priorities%20(June%2030%2C%202021).pdf.*

[45] ''[Ma]lign actors seek to conceal their ownership of corporations, limited liability companies, or other similar entities in the United States to facilitate illicit activity, including money laundering, the financing of terrorism, proliferation financing, serious tax fraud, human and drug trafficking, counterfeiting, piracy, securities fraud, financial fraud, and acts of foreign corruption[.]'' CTA, Section 6402(3).

[46] 2020 Illicit Financing Strategy, *supra* note 35, pp. 13–14, available at *https://home.treasury.gov/system/files/136/National-Strategy-to-Counter-Illicit-Financev2.pdf.*

[47] Drug Enforcement Administration, *2020 Drug Enforcement Administration National Drug Threat Assessment* (''DEA 2020 NDTA''), pp. 87–88 (2020), available at *https://www.dea.gov/sites/default/files/2021-02/DIR-008-212020NationalDrugThreat Assessment_WEB.pdf.*

[48] FBI, *Testimony of Steven M. D'Antuono, Section Chief, Criminal Investigative Division, ''Combatting Illicit Financing by Anonymous Shell Companies''* (May 21, 2019), available at *https://www.fbi.gov/news/testimony/combating-illicit-financing-by-anonymous-shell-companies.*

[49] U.S. Department of Treasury, *Treasury Sanctions Russian Officials, Members of the Russian Leadership's Inner Circle, and an Entity for Involvement in the Situation in Ukraine* (March 20, 2014), available at *https://www.treasury.gov/press-center/press-releases/Pages/jl23331.aspx.*

[50] United States Senate Permanent Subcommittee on Investigations, Committee on Homeland Security and Governmental Affairs, *Staff Report: The Art Industry And U.S. Policies That Undermine Sanctions* (July 2020), pp. 7 and 144, available at *https://www.hsgac.senate.gov/imo/media/doc/2020-07-29%20PSI%20Staff%20Report%20-%20The%20Art%20Industry%20and%20U.S.%20Policies%20that%20Undermine%20Sanctions.pdf.*

more recent example, in a federal criminal complaint unsealed in March 2021, the Department of Justice charged 10 Iranian nationals with running a nearly 20-year-long scheme to evade U.S. sanctions on the Government of Iran by disguising more than $300 million worth of transactions—including the purchase of two $25 million oil tankers—on Iran's behalf through front companies in the San Fernando Valley, Canada, Hong Kong and the United Arab Emirates.[51] The U.S. State Department has designated Iran as a state sponsor of terrorism. During the scheme, the defendants allegedly created and used more than 70 front companies, money service businesses, and exchange houses in the United States, Iran, Canada, the United Arab Emirates and Hong Kong. The defendants also allegedly made false representations to financial institutions to disguise more than $300 million worth of transactions on Iran's behalf, using money wired in U.S. dollars and sent through U.S.-based banks.[52]

iv. The Law Enforcement Need for Improved BOI Collection

Although the U.S. Government has tools capable of obtaining some beneficial ownership information, their limitations and the time and cost required to successfully deploy them demonstrate the significant benefits that a centralized repository of information would provide law enforcement. The CTA explains that ''malign actors seek to conceal their ownership of corporations, limited liability companies, or other similar entities in the United States to facilitate illicit activity,'' yet ''most or all States do not require information about the beneficial owners of the corporations, limited liability companies, or other similar entities formed under the laws of the State.'' The CTA continues, ''money launderers and others involved in commercial activity intentionally conduct transactions through corporate structures in order to evade detection, and may layer such structures . . . across various secretive jurisdictions such that each time an investigator obtains ownership records for a domestic or foreign entity, the newly identified entity is yet another corporate entity, necessitating a repeat of the same process.'' [53]

As Kenneth A. Blanco, then-Director of FinCEN observed in testimony to the U.S. Senate Committee on Banking, Housing and Urban Affairs, and based on his experience as a former state and Federal prosecutor, identifying the ultimate beneficial owner of a shell or front company in the United States ''often requires human source information, grand jury subpoenas, surveillance operations, witness interviews, search warrants, and foreign legal assistance requests to get behind the outward facing structure of these shell companies. This takes an enormous amount of time—time that could be used to further other important and necessary aspects of an investigation—and wastes resources, or prevents investigators from getting to other equally important investigations. The collection of beneficial ownership information at the time of company formation would significantly reduce the amount of time currently required to research who is behind anonymous shell companies, and at the same time, prevent the flight of assets and the destruction of evidence.'' [54] He also noted during the testimony that ''[i]dentifying and disrupting illicit financial networks not only assists in the prosecution of criminal activity of all kinds, but also allows law enforcement to halt and dismantle criminal organizations and other bad actors before they harm our citizens or our financial system.'' [55]

The FBI's Steven M. D'Antuono elaborated on these difficulties, testifying before the Senate Banking Housing and Urban Affairs Committee in 2019 that ''[t]he process for the production of records can be lengthy, anywhere from a few weeks to many years, and . . . . can be extended drastically when it is necessary to obtain information from other countries . . . . [I]f an investigator obtains the ownership records, either from a domestic or foreign entity, the investigator may discover that the owner of the identified corporate entity is an additional corporate entity, necessitating the same process for the newly discovered corporate entity. Many professional launderers and others involved in illicit finance intentionally layer ownership and financial transactions in order to reduce transparency of transactions. As it stands, it is a facially effective way to delay an investigation.'' [56] D'Antuono acknowledged that these challenges may be even more stark for state, local, and Tribal law enforcement agencies that may not have the same resources as their federal counterparts to undertake long and costly investigations to identify the beneficial owners of these entities.[57] During the testimony, he noted that requiring the disclosure of BOI by legal entities and the creation of a central BOI repository available to law enforcement and regulators could address these challenges.[58]

The process of obtaining BOI through grand jury subpoenas and other means can be time consuming and of limited utility in some cases. Grand jury subpoenas, for example, require an underlying grand jury investigation into a possible violation of law. In addition, the law enforcement officer or investigator must work with a prosecutor's office, such as a U.S. Attorney's Office, to open a grand jury investigation, obtain the grand jury subpoena, and issue it on behalf of the grand jury. The investigator also needs to determine the proper recipient of the subpoena and coordinate service, which raises additional complications in cases where there is excessive layering of corporate structures to hide the identity of the ultimate beneficial owners. In some cases, however, BOI still may not be attainable via grand jury subpoena because it does not exist. For example, because most states do not require the disclosure of BOI when forming or registering an entity, BOI cannot be obtained from the secretary of state or similar office. Furthermore, many states permit corporations to acquire property without disclosing BOI, and therefore BOI cannot be obtained from property records.

FinCEN's existing regulatory tools also have significant limitations. The current CDD Rule, for example, requires that certain types of U.S. financial institutions identify and verify the beneficial owners of legal entity customers at the time those financial institutions open a new account for a legal entity customer,[59] but the rule

[51] U.S. Department of Justice (U.S. Attorney's Office, Central District of California), *Iranian Nationals Charged with Conspiring to Evade U.S. Sanctions on Iran by Disguising $300 Million in Transactions Over Two Decades* (March 19, 2021), available at *https://www.justice.gov/usao-cdca/pr/iranian-nationals-charged-conspiring-evade-us-sanctions-iran-disguising-300-million.*

[52] *Id.*

[53] CTA, Section 6402.

[54] FinCEN, *Testimony for the Record, Kenneth A. Blanco, Director, U.S. Senate Committee on Banking, Housing and Urban Affairs* (May 21, 2019), available at *https://www.banking.senate.gov/imo/media/doc/Blanco%20Testimony%205-21-19.pdf.*

[55] *Id.*

[56] FBI, *Testimony of Steven M. D'Antuono, Section Chief, Criminal Investigative Division,* ''*Combatting Illicit Financing by Anonymous Shell Companies*'' (May 21, 2019), available at *https://www.fbi.gov/news/testimony/combating-illicit-financing-by-anonymous-shell-companies.*

[57] *Id.*

[58] *Id.*

[59] The CDD Rule NPRM contained a requirement that covered financial institutions conduct ongoing monitoring to maintain and update customer

provides only a partial solution.[60] The information about beneficial owners of certain U.S. entities is generally not comprehensive and not reported to the Government, and therefore not immediately available to law enforcement, intelligence, and national security agencies. Other FinCEN authorities—geographic targeting orders [61] and the so-called ''311 measures'' (*i.e.,* special measures imposed on jurisdictions, financial institutions, or international transactions of primary money laundering concern) [62]—offer temporary and targeted tools. Neither provides law enforcement the ability to quickly and efficiently follow the money.

Shell companies, in particular, demonstrate how critical a centralized database of beneficial ownership information is for investigators. Treasury's 2020 Illicit Financing Strategy addressed in part how current sources of information are inadequate to prosecute the use of shell entities to hide ill-gotten gains. In particular, while law enforcement agencies may be able to use subpoenas and access public databases to collect information to identify the owners of corporate structures, the 2020 Illicit Financing Strategy explained that ''[t]here are numerous challenges for federal law enforcement when the true beneficiaries of illicit proceeds are concealed through shell or front companies.'' [63] In May 2019 testimony before the Senate Banking, Housing, and Urban Affairs Committee, then-FinCEN Director Blanco provided examples of criminals who used anonymous shell corporations, including: ''A Russian arms dealer nicknamed 'The Merchant of Death,' who sold weapons to a terrorist organization intent on killing Americans. Executives from a supposed investment group that perpetrated a Ponzi scheme that defrauded more than 8,000 investors, most of them elderly, of over $1 billion. A complex nationwide criminal network that distributed oxycodone by flying young girls and other couriers carrying pills all over the United States. A New York company that was used to conceal Iranian assets, including those designated for providing financial services to entities involved in Iran's nuclear and ballistic missile program. A former college athlete who became the head of a gambling enterprise and a violent drug kingpin who sold recreational drugs and steroids to college and professional football players. A corrupt Venezuelan treasurer who received over $1 billion in bribes.'' He continued, ''These crimes are very different, as are the dangers they pose and the damage caused to innocent and unsuspecting people. The defendants and bad actors come from every walk of life and every corner of the globe. The victims—both direct and indirect—include Americans exposed to terrorist acts; elderly people losing life savings; a young mother becoming addicted to opioids; a college athlete coerced to pay extraordinary debts by violent threats; and an entire country driven to devastation by corruption. But all these crimes have one thing in common: shell corporations were used to hide, support, prolong, or foster the crimes and bad acts committed against them. These criminal conspiracies thrived at least in part because the perpetrators could hide their identities and illicit assets behind shell companies. Had beneficial ownership information been available, and more quickly accessible to law enforcement and others, it would have been harder and more costly for the criminals to hide what they were doing. Law enforcement could have been more effective and efficient in preventing these crimes from occurring in the first place, or could have intercepted them sooner and prevented the scope of harm these criminals caused from spreading.'' [64]

During the same hearing in front of the Senate's Committee on Banking, Housing, and Urban Affairs in May 2019, the FBI's D'Antuono explained that ''[t]he strategic use of [shell and front companies] makes investigations exponentially more difficult and laborious. The burden of uncovering true beneficial owners can often handicap or delay investigations, frequently requiring duplicative, slow-moving legal process in several jurisdictions to gain the necessary information. This practice is both time consuming and costly. The ability to easily identify the beneficial owners of these shell companies would allow the FBI and other law enforcement agencies to quickly and efficiently mitigate the threats posed by the illicit movement of the succeeding funds. In addition to diminishing regulators', law enforcement agencies', and financial institutions' ability to identify and mitigate illicit finance, the lack of a law requiring production of beneficial ownership information attracts unlawful actors, domestic and abroad, to abuse our state-based registration system and the U.S. financial industry.'' [65]

In February 2020, then-Secretary of the Treasury Steven T. Mnuchin testified at a Senate hearing on the President's Fiscal Year 2021 Budget that the lack of information on who controls shell companies is ''a glaring hole in our system.'' [66] In his December 9, 2020, floor statement accompanying the AML Act, Senator Sherrod Brown, the then-Ranking Member of the Senate Committee on Banking, Housing, and Urban Affairs and one of the primary authors of the enacted CTA, stated that the reporting of BOI ''will help address longstanding problems for U.S. law enforcement. It will help them investigate and prosecute cases involving terrorism, weapons proliferation, drug trafficking, money laundering, Medicare and Medicaid fraud, human trafficking, and other crimes. And it will provide ready access to this information under long-established and effective privacy rules. Without these reforms, criminals, terrorists, and even rogue nations could continue to use layer upon layer of shell companies to disguise and launder illicit funds. That makes it harder to hold bad actors accountable, and puts

information on a risk basis, specifying that customer information includes the beneficial owners of legal entity customers. As noted in the supplementary material to the final rule, FinCEN did not construe this obligation as imposing a categorical, retroactive requirement to identify and verify BOI for existing legal entity customers. Rather, these provisions reflect the conclusion that a financial institution should obtain BOI from existing legal entity customers when, in the course of its normal monitoring, the financial institution detects information relevant to assessing or reevaluating the risk of such customer. Final Rule, *Customer Due Diligence Requirements for Financial Institutions,* 81 FR 29398, 29404 (May 11, 2016).

[60] *See* U.S. Money Laundering Threat Assessment Working Group, *U.S. Money Laundering Threat Assessment* (2005), pp. 48–49, available at *https://www.treasury.gov/resource-center/terrorist-illicit-finance/documents/mlta.pdf. See also* Congressional Research Service, Miller, Rena S. and Rosen, Liana W., *Beneficial Ownership Transparency in Corporate Formation, Shell Companies, Real Estate, and Financial Transactions* (July 8, 2019), available at *https://crsreports.congress.gov/product/pdf/R/R45798.*

[61] 31 U.S.C. 5326(a); 31 CFR 1010.370.

[62] 31 U.S.C. 5318A, as added by section 311 of the USA PATRIOT Act (Pub. L. 107–56).

[63] 2020 Illicit Financing Strategy, *supra* note 35, p. 14, available at *https://home.treasury.gov/system/files/136/National-Strategy-to-Counter-Illicit-Financev2.pdf.*

[64] FinCEN, *Testimony for the Record, Kenneth A. Blanco, Director, U.S. Senate Committee on Banking, Housing and Urban Affairs* (May 21, 2019), available at *https://www.banking.senate.gov/imo/media/doc/Blanco%20Testimony%205-21-19.pdf.*

[65] FBI, *Testimony of Steven M. D'Antuono, Section Chief, Criminal Investigative Division,* ''*Combatting Illicit Financing by Anonymous Shell Companies*'' (May 21, 2019), available at *https://www.fbi.gov/news/testimony/combating-illicit-financing-by-anonymous-shell-companies.*

[66] Steven T. Mnuchin (Secretary, Department of the Treasury), *Transcript: Hearing on the President's Fiscal Year 2021 Budget before the Senate Committee on Finance* (February 12, 2020),'' p. 25, available at *https://www.finance.senate.gov/imo/media/doc/45146.pdf.*

us all at risk.'' [67] Senators Sheldon Whitehouse, Charles Grassley, Ron Wyden, and Marco Rubio, who were co-sponsors of the CTA and its predecessor legislation in the Senate, commented on the ANPRM that ''the CTA marked the culmination of a years-long effort in Congress to combat money laundering, international corruption, and kleptocracy by requiring certain companies to disclose their beneficial owners to law enforcement, national security officials, and financial institutions with customer due diligence obligations.'' [68]

v. The United States' Corporate Transparency Measures Within the Broader International Framework

The laundering of illicit proceeds frequently entails cross-border transactions involving jurisdictions with weak AML/CFT compliance frameworks, as these jurisdictions may present more ready options for criminals to place, launder, or store the proceeds of crime. For over a decade, through the former Group of Eight (G8), Group of Twenty (G20),[69] FATF, and the Egmont Group,[70] the global community has worked to establish a set of mutual standards to enhance beneficial ownership transparency across all jurisdictions. U.S. efforts to collect BOI are part of this growing international consensus by jurisdictions to enhance beneficial ownership transparency, and will be reinforced by similar efforts by foreign jurisdictions.

The current lack of a centralized U.S. BOI reporting requirement and database makes the United States a jurisdiction of choice to establish shell companies that hide the ultimate beneficiaries. This makes it easier for bad actors to exploit these companies for the placement, laundering, and investment of the proceeds of crime. Global financial centers such as the United States are particularly exposed to transnational illicit finance threats, as they tend to have characteristics—such as extensive links to the international financial system, sophisticated financial sectors, and robust institutions—that make them appealing destinations for the proceeds of illicit transnational activity. Corrupt foreign officials, sanctions evaders, and narco-traffickers, among others, exploit the current gap in the U.S. BOI reporting regime to park their ill-gotten gains in a stable jurisdiction, thereby exposing the United States to serious national security threats. For example, the Department of Justice indicted the alleged heads of the Los Zetas Mexican drug cartel for their roles in using the race horse industry and shell companies to launder millions of dollars in drug proceeds.[71] The FBI's D'Antuono noted that the wide use of shell companies, in both the United States and Mexico, made it challenging for banks and investigators to associate the drug cartel with horses and bank accounts. If not for solid witness testimony and extremely diligent forensic accounting, it would have been difficult to prove the case, he noted.[72]

As noted previously, the United States' lack of a centralized BOI reporting requirement constitutes a weak link in the integrity of the global financial system. In the CTA, Congress explained that the statute is necessary to ''bring the United States into compliance with international [AML/CFT] standards.'' [73] Many countries, including the United Kingdom and all member states of the European Union, have incorporated elements derived from these standards into their domestic legal or regulatory frameworks. At the same time, FATF mutual evaluations show that jurisdictions, including the United States, still have work to do to meet the standards for beneficial ownership transparency. Establishing the requirements to report BOI to a centralized database at FinCEN is another step in Treasury's decades-long efforts to strengthen the U.S. and global financial systems and to combat money laundering and corruption.

B. The CTA

The CTA added a new section, 31 U.S.C. 5336, to the BSA to address the broader objectives of enhancing beneficial ownership transparency while minimizing the burden on the regulated community.

In brief, 31 U.S.C. 5336 requires certain types of domestic and foreign entities, called ''reporting companies,'' to submit specified BOI to FinCEN. FinCEN is authorized to share this BOI with certain Government agencies, financial institutions, and regulators, subject to appropriate protocols.[74] The requirement for reporting companies to submit BOI takes effect ''on the effective date of the regulations prescribed by the Secretary of the Treasury under [31 U.S.C. 5336].'' [75] Reporting companies formed or registered after the effective date will need to submit the requisite BOI to FinCEN at the time of formation, while preexisting reporting companies will have a specified period to comply and report.[76]

The CTA reporting requirements target generally smaller, more lightly regulated entities that may not be subject to any other BOI reporting requirements. In contrast, the CTA exempts certain more heavily regulated entities from its reporting requirements, including to avoid imposing duplicative requirements.

The provision at 31 U.S.C. 5336 requires reporting companies to submit to FinCEN, for each beneficial owner and company applicant, the individual's full legal name, date of birth, current residential or business street address, and either a unique identifying number from an acceptable identification document (*e.g.,* a passport) or a FinCEN identifier—four readily accessible pieces of information that should not be unduly burdensome for individuals to produce, or for reporting companies to collect and submit to FinCEN.[77] A FinCEN identifier is a unique identifying number that FinCEN will

[67] Senator Sherrod Brown, ''National Defense Authorization Act,'' Congressional Record 166:208 (December 9, 2020), p. S7311, available at *https://www.govinfo.gov/content/pkg/CREC-2020-12-09/pdf/CREC-2020-12-09.pdf.*

[68] Senators Sheldon Whitehouse, Chuck Grassley, Ron Wyden, and Marco Rubio, Letter to the Financial Crimes Enforcement Network, (May 5, 2021), available at *https://www.rubio.senate.gov/public/_cache/files/ceb65708-7973-4b66-8bd4-c8254509a6f3/13D55FBEE293CAAF52B7317C5CA7E44C.senators-cta-comment-letter-05.04.2021.pdf.*

[69] *See, e.g., United States G–8 Action Plan for Transparency of Company Ownership and Control* (June 2013), *https://obamawhitehouse.archives.gov/the-press-office/2013/06/18/united-states-g-8-action-plan-transparency-company-ownership-and-control; G8 Lough Erne Declaration* (July 2013), *https://www.gov.uk/government/publications/g8-lough-erne-declaration; G20 High Level Principles on Beneficial Ownership* (2014), *https://www.g20.utoronto.ca/2014/g20_high-level_principles_beneficial_ownership_transparency.pdf*; *United States Action Plan to Implement the G–20 High Level Principles on Beneficial Ownership* (Oct. 2015), *https://obamawhitehouse.archives.gov/blog/2015/10/16/us-action-plan-implement-g-20-high-level-principles-beneficial-ownership.*

[70] FATF has also collaborated with the Egmont Group of Financial Intelligence Units on a study that identifies key techniques used to conceal beneficial ownership and identifies issues for consideration that include coordinated national action to limit the misuse of legal entities. FATF-Egmont Group, *Concealment of Beneficial Ownership* (2018), *https://egmontgroup.org/sites/default/files/filedepot/Concealment_of_BO/FATF-Egmont-Concealment-beneficial-ownership.pdf.* The Egmont Group is a body of 166 Financial Intelligence Units (FIUs); FinCEN is the FIU of the United States and a founding member of the Egmont Group. The Egmont Group provides a platform for the secure exchange of expertise and financial intelligence amongst FIUs to combat money laundering and terrorist financing.

[71] FBI, *Testimony of Steven M. D'Antuono, Section Chief, Criminal Investigative Division,* ''*Combatting Illicit Financing by Anonymous Shell Companies*'' (May 21, 2019), available at *https://www.fbi.gov/news/testimony/combating-illicit-financing-by-anonymous-shell-companies.*

[72] *Id.*

[73] CTA, Section 6402(5)(E).

[74] *See generally* 31 U.S.C. 5336(b), (c).

[75] 31 U.S.C. 5336(b)(5).

[76] *See* 31 U.S.C. 5336(b)(1)(B), (C).

[77] *See* 31 U.S.C. 5336(b)(2).

issue to individuals or entities upon request.[78] In certain instances, the FinCEN identifier provides a substitute to individuals who do not wish to provide their names, birth dates, or addresses to a reporting company.[79]

Given the sensitivity of the reportable information, the CTA imposes strict confidentiality, security, and access restrictions on the data. FinCEN is authorized to disclose reportable BOI to a statutorily defined group of governmental authorities and financial institutions, in limited circumstances. Federal agencies, for example, may only obtain access to BOI when acting in furtherance of national security, intelligence, or law enforcement activity.[80] State, local, and Tribal law enforcement agencies require ''a court of competent jurisdiction'' to authorize them to seek BOI as part of a criminal or civil investigation.[81] Foreign government access is limited to foreign law enforcement agencies, prosecutors, and judges in specified circumstances.[82] FinCEN may also disclose reported BOI to financial institutions that need such BOI to facilitate compliance with customer due diligence requirements under applicable law, with the consent of the reporting company.[83] Moreover, a financial institution's regulator can obtain BOI that has been provided to a regulated financial institution for the purpose of performing regulatory oversight that is specific to that financial institution.[84] Taken together, these measures, along with other restrictions, requirements, and security protocols delineated in the CTA, will help to ensure that BOI collected under 31 U.S.C. 5336 is only used for statutorily described purposes. As noted above, FinCEN intends to address the regulatory requirements related to access to information reported pursuant to the CTA through a future rulemaking process.

The CTA also requires that FinCEN rescind and revise portions of the current CDD Rule within one year after the effective date of the BOI reporting rule.[85] The CTA does not direct FinCEN to rescind the requirement for financial institutions to identify and verify the beneficial owners of legal entity customers under 31 CFR 1010.230(a), but does direct FinCEN to rescind the beneficial ownership identification and verification requirements of 31 CFR 1010.230(b)–(j).[86] The CTA identifies three purposes for this revision: (1) To bring the rule into conformity with the AML Act as a whole, including the CTA; (2) to account for financial institutions' access to BOI reported to FinCEN ''in order to confirm the beneficial ownership information provided directly to the financial institutions'' for AML/CFT and customer due diligence purposes; and (3) to reduce unnecessary or duplicative burdens on financial institutions and legal entity customers.[87]

FinCEN intends to satisfy the requirements related to the revision of the CDD Rule through a future rulemaking process that will provide the public with an opportunity to comment on the effect of the final provisions of the beneficial ownership reporting rule on financial institutions' customer due diligence obligations. The rulemaking process will also allow FinCEN to reach informed conclusions about the proper scope of the CDD Rule.[88] FinCEN anticipates that this rulemaking process will touch on the issue of the interplay between the FinCEN-hosted BOI information technology (IT) system and financial institutions' diligence efforts.

C. The Advance Notice of Proposed Rulemaking

On April 5, 2021, FinCEN published an ANPRM on the BOI reporting requirements.[89] The ANPRM sought public input in five open-ended categories of questions, including on clarifying key definitions, developing reporting procedures, and establishing compliance standards for reporting companies. The ANPRM also sought comment on FinCEN's implementation of the related provisions of the CTA that govern FinCEN's maintenance and disclosure of BOI subject to appropriate protocols.

In response to the ANPRM, FinCEN received 220 public comments from a wide variety of commenters, including businesses, civil society organizations, trade associations, law firms, secretaries of state and other state officials, Indian Tribes, Members of Congress, and numerous individuals. Commenters expressed a range of opinions, frequently conflicting, about which entities should report, what information they should report, about whom they should report, how to ensure that the implementation of the CTA generates highly useful data for authorized users, how to minimize burden on reporting companies, and more.

FinCEN has considered all of the comments that it received in response to the ANPRM in drafting this proposed rule. The section-by-section analysis that follows incorporates discussion of certain issues raised by commenters.

D. Outreach

FinCEN has also engaged in outreach with a variety of potential stakeholders, including state and Tribal entities (*e.g.,* secretaries of state), law enforcement, representatives of civil society organizations, financial institution trade associations, and broader business trade associations, to make them aware of the CTA and encourage them to provide written comments during the rulemaking process to ensure FinCEN's consideration of their perspectives.

IV. Section-by-Section Analysis

This proposed rule would revise the regulations implementing the BSA by adding a new reporting requirement at § 1010.380 (''Reports of beneficial ownership information''), in subpart C (''Reports Required to be Made'') of part 1010 (''General Provisions'') of chapter X (''Financial Crimes Enforcement Network'') of title 31, Code of Federal Regulations.

The analysis that follows addresses the key elements of the proposed rule: (A) Information to be reported; (B) beneficial owners; (C) company applicant; (D) reporting company; (E) timing, format, and mechanics of reports; (F) reporting violations; and (G) definitions. The analysis has a final subsection (H) that discusses the issue of the effective date of the regulation.

A. Information To Be Reported

The CTA requires each reporting company to submit to FinCEN a report identifying each beneficial owner of the reporting company and each company applicant by: (1) Full legal name, (2) date of birth, (3) current residential or business street address, and (4) unique identifying number from an acceptable identification document; or, if this

[78] *See* 31 U.S.C. 5336(b)(3)(A)(i).

[79] *See* 31 U.S.C. 5336(b)(3)(B).

[80] *See* 31 U.S.C. 5336(c)(2)(B)(i)(I).

[81] *See* 31 U.S.C. 5336(c)(2)(B)(i)(II).

[82] *See* 31 U.S.C. 5336(c)(2)(B)(ii).

[83] *See* 31 U.S.C. 5336(c)(2)(B)(iii).

[84] *See* 31 U.S.C. 5336(c)(2)(C).

[85] CTA, Section 6403(d)(1).

[86] CTA, Section 6403(d)(2). The CTA orders the rescission of paragraphs (b) through (j) directly (''the Secretary of the Treasury shall rescind paragraphs (b) through (j)'') and orders the retention of paragraph (a) by a negative rule of construction (''nothing in this section may be construed to authorize the Secretary of the Treasury to repeal . . . [31 CFR] 1010.230(a)[.]'').

[87] CTA, Section 6403(d)(1)(A)–(C).

[88] Final Rule, *Customer Due Diligence Requirements for Financial Institutions,* 81 FR 29398–29402 (May 11, 2016).

[89] ANPRM, *Beneficial Ownership Information Reporting Requirements,* 86 FR 17557–17565 (April 5, 2021).

information has already been provided to FinCEN, by a FinCEN identifier.[90]

To implement this requirement, proposed 31 CFR 1010.380(b) specifies that each report or application under that section must be filed with FinCEN in the form and manner FinCEN prescribes, and each person filing such report shall certify that the report is accurate and complete.[91] It then sets forth the requirement for reporting companies to report to FinCEN identifying information about their beneficial owners, the company applicant, and the reporting company itself. Finally, it outlines certain special reporting rules and sets forth the requirements for obtaining a FinCEN identifier.

i. Information To Be Reported on Beneficial Owners and Company Applicants

Proposed 31 CFR 1010.380(b)(1)(ii) sets forth the specific items of information that a reporting company must report about each individual beneficial owner and each individual company applicant.[92] The language is drawn nearly verbatim from 31 U.S.C. 5336(b)(2)(A). In addition, for clarity, it incorporates the statutory definition of ''acceptable identification document,'' 31 U.S.C. 5336(a)(1), rather than leaving the reader to identify the cross-reference based on the CTA's reference to a ''unique identifier number from an acceptable identification document.'' [93] Also for clarity, the proposed rule consolidates discussion of the FinCEN identifier in proposed 31 CFR 1010.380(b)(5).

The proposed rule also clarifies what address information should be reported. The statute requires reporting companies to identify beneficial owners and applicants by their ''residential or business street address.'' 31 U.S.C. 5336(b)(2)(A)(iii). The statutory requirement does not specify when or whether one type of address should be used in preference to another or resolve more specific questions regarding secondary addresses or whether addresses should be domestic, if possible, or can be foreign. FinCEN considered leaving to the reporting company the choice of which address to report, but assessed that this would unduly diminish the usefulness of the reported information to national security, intelligence, and law enforcement activity. Beneficial owners are of interest because of their economic status as persons who own or control a reporting company. Business addresses or secondary residence addresses are of some investigative value as points of contact in the event that an investigation requires follow-up, but such addresses do not definitively establish a beneficial owner's primary residence jurisdiction. A beneficial owner's residential address for tax residency purposes, by contrast, is of value both as a point of contact and for tax administration purposes.[94] Moreover, multiple persons may be associated with a business address. FinCEN believes that the residential street address will therefore be more useful for establishing the unambiguous identity of an identified beneficial owner. The reporting of a residential street address will also likely allow for easier follow-up by law enforcement in the event of investigative need. Accordingly, FinCEN believes that requiring the disclosure of beneficial owners' residential street address for tax residency purposes is appropriate. FinCEN therefore proposes that the reporting company report the residential address for tax residency purposes of each beneficial owner.

With respect to a company applicant's address, FinCEN proposes a bifurcated approach. For company applicants that provide a business service as a corporate or formation agent, the reporting company would need to report the business address of any company applicant that files a document in the course of such individual's business. Company applicants that provide a business service as a corporate or formation agent are of particular interest because of their role in creating or registering reporting companies. While any address for such a company applicant is of some value as a point of contact in an inquiry or investigation, company applicants who file formation documents in the course of their business may be more easily identified by their business address. To the extent company applicants make a business of filing documents on behalf of many companies, reporting the associated business address may provide more useful information to national security, intelligence, and law enforcement agencies. The business address will also allow law enforcement to identify patterns of entities that are created or registered by company applicants working at the same business address; such patterns would not be easily identifiable if the name and address reported is specific to an individual operating on a formation agent's behalf. This information could provide insight into business practices and relationships between individuals and entities, including patterns of entity formation that suggest persons are engaged in the business of creating legal entities for the purpose of obscuring the beneficiaries of transactions or the owners of valuable assets. This information may therefore provide valuable information for national security, intelligence, and law enforcement activity.

For all other company applicants, the reporting company would need to report the residential street address that the individual uses for tax residency purposes. This establishes a uniform rule for the selection of addresses to be reported and provides specificity to the reporting company for ease of administration. It would also help to maximize the benefit to be gained from the reporting of this data element because stakeholders will not have to figure out which address was reported.

In addition, the CTA authorizes FinCEN to prescribe procedures and standards governing the reports identifying beneficial owners and applicants ''by,'' among other things, a ''unique identifying number from an acceptable identification document.'' [95] The CTA does not specify how an individual is to be identified ''by'' such number ''from'' such document. However, the CTA also makes it unlawful to ''willfully provide, or attempt to provide . . . a false or fraudulent identifying photograph or document . . . to FinCEN,'' indicating an assumption that identifying photographs or documents would be reported.[96] This provision therefore

[90] 31 U.S.C. 5336(b)(1)(A) (reporting requirement); 31 U.S.C. 5336(b)(2) (required information).

[91] Commenters to the ANPRM discussed the potential for FinCEN to require an attestation of accuracy or other certification on either a one-time or periodic basis, including financial institution trade associations and civil society organizations, which argued that such a requirement would encourage reporting companies to keep their information up to date. However, others argued that FinCEN lacks the statutory authority to include such a requirement in the regulations. FinCEN invites further comments on its proposal that a person filing a report or application with FinCEN pursuant to 31 CFR 1010.380(a) shall certify that the report is accurate and complete.

[92] ''Company applicant'' is the proposed rule's term for what the statute refers to as the ''applicant.'' *See* 31 U.S.C. 5336(a)(2).

[93] *See* 31 U.S.C. 5336(b)(2)(A)(iv)(I) (for information submission requirement); 31 U.S.C. 5336(a)(1) (for definition of ''acceptable identification document''). The definition of ''acceptable identification document'' is not inserted entirely verbatim because FinCEN has made certain minor changes to the statutory language to clarify the text.

[94] *See* 31 U.S.C. 5336(c)(5)(B) (''Officers and employees of the Department of the Treasury may obtain access to beneficial ownership information for tax administration purposes . . . .'').

[95] 31 U.S.C. 5336(b)(4), (b)(2)(A)(iv).

[96] 31 U.S.C. 5336(h)(1)(A).

indicates that FinCEN has authority to collect a scanned copy of an identification document, along with the document's number, in prescribing reporting procedures and standards. Therefore, the proposed rule specifies that the reporting company provide a scanned copy of the identification document from which the unique identifying number of the beneficial owner or company applicant is obtained, in connection with reporting that unique number.

FinCEN believes that the collection of an image would significantly contribute to the creation of a highly useful database for law enforcement and other authorized users. The image submitted by a reporting company in connection with a specific beneficial owner or company applicant could help to confirm the accuracy of the reported unique identification number because the image would contain the number. FinCEN also believes this requirement would make it more difficult to provide false identification information because it is likely to be significantly more difficult to falsify an image of an identification document than to report an inaccurate number. The image may also assist law enforcement in identifying an individual because it would contain a picture of the individual associated with the identifying number, providing further confirmation of the individual's identity. While such pictures may already be available to law enforcement from existing records associated with the reported identification numbers, it would be highly useful for law enforcement to obtain such information from a centralized BOI database than to obtain the identification number from the BOI database and the picture from a different source. FinCEN considered that, as noted by several commenters, requiring an image may impose some additional burdens on reporting companies (*e.g.,* gathering and submitting images of the identification documents for each beneficial owner and company applicant). FinCEN anticipates, however, that the burdens should be minimal because requesting a copy of an individual's identification document appears routine (*e.g.,* to verify an employee's immigration status), and technological advances have made it relatively easy for individuals to provide scanned images. FinCEN welcomes comments on the proposed collection of a scanned copy of an identification document. FinCEN recognizes that several commenters encouraged FinCEN to require reporting companies to report significantly more information on each beneficial owner than is required by statute. For example, various commenters suggested FinCEN should require reporting of whether a beneficial owner fell under the ''ownership interests'' or ''substantial control'' components of the definition of ''beneficial owner,'' precise reporting of ownership interest percentages, whether ownership interests are held directly or indirectly, and other types of information. Such additional information might enhance the utility of the database to authorized users. FinCEN welcomes further comments on the statutory authority for and practical effect of requiring additional information to be reported.

Proposed 31 CFR 1010.380(b)(2) would permit a reporting company to report the Taxpayer Identification Number [97] (TIN) of its beneficial owners and company applicants on a voluntary basis, solely with the prior consent of each individual whose TIN would be reported and with such consent to be recorded on a form that FinCEN will provide. While the statute requires reporting companies to provide certain specified information, it does not prohibit reporting companies from providing additional information on a voluntary basis. FinCEN has proposed this voluntary reporting option because such information would help ensure that the database of beneficial ownership information is highly useful for authorized users, in furtherance of the CTA's purpose and mandate. For example, having access to a TIN will allow authorized users such as FinCEN, law enforcement, investigators, and financial institutions to cross-reference other databases and more easily verify the information of an individual. FinCEN believes that the inclusion of TIN reporting, even if voluntary, may help to raise standards for due diligence and transparency expectations for financial institutions and other governments. FinCEN is particularly interested in comments on this proposal to provide a voluntary mechanism to report beneficial owner and company applicant TINs.

ii. Information To Be Reported on Reporting Companies

Proposed 31 CFR 1010.380(b)(1)(i) would require reporting companies to report certain information to identify the reporting company. While the CTA specifies the information required to be reported to ''identify each beneficial owner of the applicable reporting company and each applicant with respect to that reporting company,'' the CTA does not specify what, if any, information a reporting company must report about itself.[98] However, the CTA's express requirement to identify beneficial owners and applicants for each reporting company clearly implies a requirement to identify the associated company. That implicit requirement is confirmed by the structure and overriding objective of the CTA, which is to identify the individuals who own, control, and register each particular entity, as well as by the CTA's direction to ''ensure that information is collected in a form and manner that is highly useful.'' [99] Without identifying information about the reporting company itself, FinCEN would have no ability to determine the entity that is associated with each reported beneficial owner or company applicant. For example, an investigator could not determine what entities a known drug trafficker uses to launder money. Conversely, an investigator also could not determine who owns or controls an entity it knows is being used to launder money. This would frustrate Congress's express purposes in enacting the CTA and would amount to an absurd result.[100]

Therefore, to ensure that each reporting company can be identified, the proposed regulations would require each reporting company to report its name, any alternative names through which the company is engaging in business (''d/b/a names''), its business street address, its jurisdiction of formation or registration, as well as a unique identification number.

FinCEN believes that a company name alone may not be sufficient

[97] A TIN is an identification number used by the Internal Revenue Service (IRS) in the administration of tax laws and assists in identifying entities and individuals and distinguishing them from one another. *See* IRS, *Taxpayer Identification Numbers (TINs),* available at *https://www.irs.gov/individuals/international-taxpayers/taxpayer-identification-numbers-tin.* A TIN is unique to an entity or individual.

[98] 31 U.S.C. 5336(b)(2)(A).

[99] CTA, Section 6402. *See also* 31 U.S.C. 5336(b)(1)(F)(iv)(I), (b)(4)(B)(ii), (d)(2)–(3).

[100] *See, e.g., Griffin* v. *Oceanic Contractors, Inc.,* 458 U.S. 564, 575 (1982) (noting that ''interpretations of a statute which would produce absurd results are to be avoided if alternative interpretations consistent with the legislative purpose are available''); *Arkansas Dairy Co-op Ass'n, Inc.* v. *Dep't of Agr.,* 573 F.3d 815, 829 (D.C. Cir. 2009) (rejecting a reading of a statute that would produce a ''glaring loophole'' in Congress's instruction to an agency); *Ass'n of Admin. L. Judges* v. *FLRA,* 397 F.3d 957, 962 (D.C. Cir. 2005) (''Unless it has been extraordinarily rigid in expressing itself to the contrary . . . the Congress is always presumed to intend that pointless expenditures of effort be avoided.'' (cleaned up)); *Pub. Citizen* v. *Young,* 831 F.2d 1108, 1112 (D.C. Cir. 1987) (explaining that ''a court must look beyond the words to the purpose of the act where its literal terms lead to absurd or futile results'' (cleaned up)).

information to uniquely identify each reporting company and distinguish it from other companies with similar names. Companies formed in different states may have the same names because the entity formation practices of many states require a new entity to choose a legal name that is unique within that state but do not require a new entity's legal name to be unique within the United States. In addition, companies with similar names may be mistaken for each other due to misspellings or other errors. Moreover, FinCEN must have enough specific information about a reporting company to enable accurate searching of the database of beneficial ownership information. Given that companies may have similar names, addresses, and states of formation or registration, FinCEN believes that having a unique identification number for each reporting company is critical to enabling the unique identification of a reporting company and effectively searching the database to identify the beneficial ownership information reported for a particular company. The proposed rules would thus require the submission of additional information beyond each company's name.

Specifically, the reporting company would be required to submit a TIN (including an Employer Identification Number (EIN)), or where a reporting company has not yet been issued a TIN, a Dun & Bradstreet Data Universal Numbering System (DUNS) number or a Legal Entity Identifier (LEI). A reporting company must furnish a TIN on all tax returns, statements, and other tax related documents filed with the IRS. As a result, FinCEN believes that there will be limited burdens for a reporting company with a tax filing obligation in the United States to provide its TIN. However, FinCEN recognizes that an entity may not be able to provide a TIN, such as in the case of a newly formed entity that does not yet have a TIN when it submits a report to FinCEN at the time of formation or registration. Accordingly, in FinCEN's proposal, a reporting company may provide a DUNS [101] or LEI [102] if it does not yet have a TIN. The DUNS and LEI numbers are commonly used in the United States and globally to distinguish entities from one another and to create unique identifying codes to facilitate financial and other transactions. Over 1.8 million LEIs have been created globally and the LEI is being adopted as a global standard in business transactions. More than 240,000 entities in the United States use LEIs to identify and distinguish themselves.[103] Pursuant to 31 CFR 1010.380(b)(5)(ii)(B), if a reporting company has applied for and received a FinCEN identifier, it may submit the FinCEN identifier in lieu of a TIN, DUNS, or LEI number.

FinCEN expects that there should be minimal burden on a reporting company to obtain and report basic identifying information about itself in light of the need to have a TIN to pay taxes in the United States and the need for other identifying numbers and information to conform to other business requirements. Additionally, the information that FinCEN is proposing to collect does not extend beyond basic identifying information that should be readily available to the reporting company. However, FinCEN welcomes comments on the anticipated burden of this reporting requirement, particularly for newly formed entities that may not have a unique identifying number shortly after formation, and potential alternatives that would allow for the unique identification of the reporting company and effective searching of the beneficial ownership database.

FinCEN recognizes the perspective of the many commenters who encouraged FinCEN to require a reporting company to report a significant amount of additional information about itself and about intermediate legal entity owners through which ultimate natural person beneficial owners of the reporting company own their interests. FinCEN believes that requiring detailed reporting of intermediate legal entity owners and other information about reporting companies could substantially enhance the transparency of companies' ownership structures and make the collected data more useful for law enforcement, financial institutions, and other authorized users. However, the commenters who urged collection of this information did not identify the statutory authority for the collection of such information from reporting companies. FinCEN welcomes further comments on the authority for and practical effect of collecting such additional information under the CTA.

FinCEN further recognizes certain commenters have raised concerns that a reporting company may list the address of a formation agent or other third party as its ''business street address,'' rather than its principal place of business or the business entity's actual physical location. FinCEN believes that requirement to submit a reporting company's business street address precludes the reporting of the address of the reporting company's formation agent or other third party representatives, but welcomes comments on whether the term ''business street address'' is sufficiently clear or whether further clarification is needed to avoid the reporting of addresses of formation agents and other third parties as a reporting company's ''business street address.''

iii. Special Rules

Proposed 31 CFR 1010.380(b)(3) sets forth special reporting rules for ownership interests held by exempt entities, minor children, foreign pooled investment vehicles, and deceased company applicants. Specifically, proposed 31 CFR 1010.380(b)(3)(i) sets forth a special rule for reporting companies with ownership interests held by exempt entities, consistent with the requirements of 31 U.S.C. 5336(b)(2)(B). As set forth in the special rule, if an exempt entity under 31 CFR 1010.380(c)(2) 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 by virtue of such ownership interest, the report shall include the name of the exempt entity rather than the information required under paragraph (b)(1) with respect to such beneficial owner. This rule is intended to avoid a situation in which an entity that is exempt from the beneficial ownership reporting requirement is nonetheless required to disclose its beneficial owners as a result of its ownership of a reporting company.

Proposed 31 CFR 1010.380(b)(3)(ii) provides a special rule for reporting the information of a parent or guardian in lieu of information about a minor child. Specifically, proposed 31 CFR 1010.380(b)(3)(ii) provides that if a reporting company reports the information required under paragraph (b)(1) with respect to a parent or legal guardian of a minor child consistent with the exception outlined at 31 CFR 1010.380(d)(4)(i), then the report shall indicate that such information relates to the parent or legal guardian. Without this information, stakeholders would not know that the parent or legal guardian is not the actual beneficial owner.

Proposed 31 CFR 1010.380(b)(3)(iii) explains the special rule for foreign pooled investment vehicles that the CTA established in 31 U.S.C.

[101] *See* Dun & Bradstreet, *What is a D–U–N–S Number?,* available at *https://www.dnb.com/duns-number.html.*

[102] *See* LEI Worldwide, *What is a Legal Entity Identifier?,* available at *https://www.lei-worldwide.com/what-is-a-legal-entity-identifier.html.*

[103] *See* Global LEI Foundation, *LEI Statistics—Global LEI Index—LEI Data—GLEIF,* available at *https://www.gleif.org/en/lei-data/global-lei-index/lei-statistics.*

5336(b)(2)(C). Under proposed 31 CFR 1010.380(b)(3)(iii), a foreign legal entity that is formed under the laws of a foreign country, and that would be a reporting company but for the pooled investment vehicle exemption in 31 CFR 1010.380(c)(2)(xviii), must report to FinCEN the BOI of the individual who exercises substantial control over the legal entity.

Proposed 31 CFR 1010.380(b)(3)(iv) sets forth a special reporting rule for situations where a reporting company is created before the effective date of the regulations and the company applicant has died before the reporting obligation is effective. The proposed rule elaborates at 31 CFR 1010.380(e) that a company applicant is the individual who files, including by directing or controlling the filing, the document that created the reporting company. This may present substantial challenges for a longstanding company (*e.g.,* one that was formed a century ago). In specifying the information to be reported about beneficial owners and applicants, the CTA appears to presume that such individuals are not deceased, as it requires a current address and a number from a nonexpired identification document.[104] Thus, for deceased individuals, Congress does not appear to have spoken directly to the information required to be reported to identify such individuals, and FinCEN must ''prescribe procedures and standards governing any report'' for such individuals.[105]

To minimize burdens in this unique situation, proposed 31 CFR 1010.380(b)(3)(iv) would allow a reporting company formed or registered before the effective date of the regulations, and whose company applicant died before the reporting company had an obligation to obtain identifying information from a company applicant, to report that fact along with whatever identifying information the reporting company actually knows about the company applicant. FinCEN believes that this tailored approach balances stakeholders' need for information on company applicants with the challenges older reporting companies may face. FinCEN welcomes comments on this special rule or any other special rules that may be required to alleviate the burden of company applicant reporting, and would encourage commenters to include an explanation of why they believe such further proposed special rules are consistent with the CTA.

FinCEN does not propose to apply the same rule to deceased beneficial owners because, as the statute makes clear and as the proposed rule elaborates at proposed 31 CFR 1010.380(d), the requirement to report beneficial owners pertains to those who are the *current* beneficial owners of the reporting company. While a company applicant will remain the same for all time after the entity is created, an individual will cease to be a beneficial owner upon death. As a result, no beneficial owners will be deceased at the time a company must report them. A reporting company thus will not face the same burdens in reporting information about current beneficial owners as it may face in reporting information about deceased company applicants.

iv. FinCEN Identifier; Other Matters

Proposed 31 CFR 1010.380(b)(4) would specify the contents of corrected and updated reports, making clear that such reports filed in the time and manner specified in 31 CFR 1010.380(a) must contain the corrected or updated information, and in the case of newly exempt entities, shall contain a notification that the exempt entity is no longer a reporting company. These updated and corrected reports are explained in 31 CFR 1010.380(a)(2) and (3).

Proposed 31 CFR 1010.380(b)(5) sets forth rules that relate to obtaining and using a FinCEN identifier, reflecting requirements that are found in several different parts of 31 U.S.C. 5336. Consistent with 31 U.S.C. 5336(b)(3)(A), an individual may obtain a FinCEN identifier by providing FinCEN with the information that the individual would otherwise have to provide to a reporting company if the individual were a beneficial owner or applicant of the reporting company; an entity can obtain a FinCEN identifier from FinCEN when it submits a filing as a reporting company or any time thereafter.[106] This means that an individual or legal entity must still disclose information to FinCEN, but once an individual or legal entity has a FinCEN identifier, the individual or legal entity can provide the identifier to a reporting company in lieu of the personal details required under paragraph (b)(1). For instance, an individual can provide his or her FinCEN identifier to the reporting company, and the reporting company can provide the FinCEN identifier to FinCEN in lieu of any information the reporting company would otherwise have to report about the individual under paragraph (b)(1). Similarly, an entity can provide the FinCEN identifier to the reporting company, and the reporting company can provide the FinCEN identifier to FinCEN in lieu of any information the reporting company would otherwise have to report about that entity's beneficial owners if they qualified as beneficial owners of the reporting company through their interests in the entity. In such circumstances, the underlying information associated with a FinCEN identifier would still be available to FinCEN.

B. Beneficial Owners

The CTA defines a beneficial owner, with respect to a reporting company, as ''any individual who, directly or indirectly, through any contract, arrangement, understanding, relationship, or otherwise—(i) exercises substantial control over the entity; or (ii) owns or controls not less than 25% of the ownership interests of the entity.'' [107] The statute, however, does not define ''substantial control'' or ''ownership interests.'' FinCEN proposes to clarify these terms in the rule so that a reporting company has sufficient guidance to identify and report its beneficial owners.

Consistent with the CTA, the proposed rule would require a reporting company to identify any individual who satisfies either of these two components. Based on the breadth of the substantial control component, FinCEN expects that a reporting company would identify at least one beneficial owner under that component regardless of whether (1) any individual satisfies the ownership component, or (2) exclusions to the definition of beneficial owner apply. FinCEN is interested in comments addressing whether that expectation is reasonable, under what circumstances a reporting company may not have at least one reportable beneficial owner, and how to address such circumstances, if they exist.

i. Substantial Control

Proposed 31 CFR 1010.380(d)(1) sets forth three specific indicators of substantial control: (1) Service as a senior officer of a reporting company; (2) authority over the appointment or removal of any senior officer or dominant majority of the board of directors (or similar body) of a reporting company; and (3) direction, determination, or decision of, or substantial influence over, important

[104] 31 U.S.C. 5336(b)(2)(A).

[105] 31 U.S.C. 5336(b)(4)(A).

[106] The statute provides that only entities that report their beneficial ownership information to FinCEN are eligible to receive FinCEN identifiers. 31 U.S.C. 5336(b)(3)(A)(i).

[107] 31 U.S.C. 5336(a)(3)(A).

matters of a reporting company. The regulation also includes a catch-all provision to make clear that substantial control can take additional forms not specifically listed. Each of these indicators supports the basic goal of requiring a reporting company to identify the individuals who stand behind the reporting company and direct its actions. The first indicator identifies the individuals with nominal or *de jure* authority, the second and third indicators identify the individuals with functional or *de facto* authority, and the catch-all provision recognizes that control exercised in novel and unorthodox ways can still be substantial. This last approach is consistent with the common law tradition and the standards that FinCEN examined, as well as the broader objective of preventing individuals from evading identification as beneficial owners by hiding behind formalisms such as job descriptions, job titles, and nominal lack of authority.

In developing the proposed definition of substantial control, FinCEN looked to the common law of agency and corporate law and the usage of that term in other federal statutes, which generally incorporate similar agency-law concepts. FinCEN considered these statutes in framing functional tests for assessing whether an individual exercises substantial control over an entity. FinCEN also considered the FATF Recommendations, established beneficial-owner reporting standards such as that used with the United Kingdom's (UK's) People with Significant Control (or PSC) Register, U.S. Federal tax law, and the statutory law and administrative practice informing the activity of the Committee on Foreign Investment in the United States (CFIUS). Drawing in part on these standards, and supported by many commenters' suggestions that FinCEN do so, proposed 31 CFR 1010.380(d)(1)(iii) provides specific examples of indicators of substantial control. This non-exhaustive list of examples is intended to clarify the types of matters FinCEN considers relevant to an analysis of whether an individual is ''direct[ing], determin[ing], or deci[ding] . . . important matters affecting [a] reporting company'' and thus exercising substantial control. Reporting companies should be guided by the specific examples in the proposed rule, but they should also consider how individuals could exercise substantial control in other ways.

FinCEN acknowledges the concerns raised by commenters that too broad a definition of substantial control could engender confusion. One commenter pointed out that property managers make decisions that influence the operations of the property but are hired by and report to the owners of the property; the commenter did not think such individuals should necessarily be considered beneficial owners on these facts alone, and FinCEN agrees. The ordinary execution of day-to-day managerial decisions with respect to one part of a reporting company's assets or employees typically should not, in isolation, cause the decision-maker to be considered in substantial control of a reporting company, unless that person satisfies another element of the ''substantial control'' criteria.

Proposed 31 CFR 1010.380(d)(2) provides a general reminder that an individual can exercise substantial control directly or indirectly. This incorporates statutory language from the CTA that applies to all beneficial ownership determinations and includes additional language applying the concept found in the CTA to the specific instances of substantial control found in proposed 31 CFR 1010.380(d)(1).

FinCEN carefully considered the burden that this approach to defining substantial control might impose on reporting companies, small businesses in particular. Based on the comments to the ANPRM, FinCEN recognizes that the CTA may require certain entities to disclose BOI on more and different individuals than they are accustomed to under the control prong of the current CDD Rule. FinCEN also recognizes that reporting companies will likely incur some additional costs in complying with this obligation. That said, FinCEN expects the amount of additional time and effort required to comply with the proposed rule to be minimal. Specifically, under the proposed rule, a reporting company would not need to spend significant time assessing which of its beneficial owners would be the most appropriate to report as being in substantial control. Rather, entities would simply report all persons in substantial control as beneficial owners, with no need to distinguish among them. Additionally, FinCEN believes that entities are already aware of their own ownership structures, regardless of complexity, and should be able to readily identify their beneficial owners. Therefore, FinCEN expects that compliance should not be particularly burdensome for most businesses. While FinCEN's approach could be viewed to raise concerns about the disclosure of personal information about a broader range of individuals, the privacy impact of reporting BOI to FinCEN is relatively light, because, unlike beneficial ownership registries in many other countries, FinCEN's database will not be public and will be subject to stringent access protocols.

FinCEN recognizes that its proposed definition of substantial control diverges from the approach that a number of commenters to the ANPRM stated they would prefer, *i.e.,* the approach laid out in the current CDD Rule. Under the ''control prong'' of the current CDD Rule, new legal entity customers of a financial institution must provide BOI for the one individual who exercises a ''significant degree of control'' over the entity. FinCEN considered whether the proposed rule should adopt a comparable approach. As some ANPRM commenters argued, limiting the number of persons identified under the substantial control component to one could minimize burden to reporting companies and help clarify when reporting companies had complied with the CTA's reporting requirements.

However, the CTA does not require the identification of only one person in substantial control.[108] The CTA also mandates that FinCEN rescind and revise portions of the CDD Rule, including the paragraph on beneficial owners, to bring the pre-CTA CDD Rule into conformity with the CTA.[109] FinCEN therefore need not adopt the framework established by the current CDD Rule, and incorporating the CDD Rule's numerical limitation would appear inconsistent with the CTA's objective of establishing a comprehensive BOI database for all beneficial owners of reporting companies. FinCEN believes that limiting reporting of individuals in substantial control to one person as in the CDD Rule—or indeed to impose any other numerical limit—would artificially limit the reporting of beneficial owners who may exercise substantial control over an entity, and could become a means of evasion. Requiring reporting companies to identify all individuals who exercise

[108] The proposed approach would also be consistent with the text of the CTA, which—unlike the CDD Rule that preceded it—does not expressly limit the definition of beneficial owner to ''a single individual.'' *Compare* 31 U.S.C. 5336(a)(3)(A) (''The term beneficial owner means, with respect to an entity, an individual who . . . exercises substantial control over the entity.'') *with* 31 CFR 1010.230(d)(2) (defining ''beneficial owner'' as ''a *single* individual with significant responsibility to control, manage or direct a legal entity'' (emphasis added)). Under well-established principles of agency law, moreover, more than one individual can exercise substantial control over a single agent. *See, e.g.,* Restatement (Third) of Agency Sec. 3.14, *Agents with Multiple Principals; id.* Sec. 3.16, *Agents for Coprincipals* (''Two or more persons may as coprincipals appoint an agent to act for them in the same transaction or matter.'').

[109] 31 U.S.C. 5336(d).

substantial control would provide law enforcement and others a much more complete picture of who makes important decisions at a reporting company.

FinCEN also considered but rejected a *per se* rule that would have deemed all officers of a reporting company to be in ''substantial control'' of the entity, and therefore, beneficial owners. While a *per se* rule is clear and easy to administer, FinCEN ultimately concluded that the CTA's consistent focus on individuals that are in actual substantial control of a reporting company argued against creating a definition of ''substantial control'' that relies on titles alone. Thus, while FinCEN has retained a *per se* element in its proposed definition of substantial control—requiring the reporting of any ''senior officer'' as a person in substantial control—this is only a part of the definition in proposed 31 CFR 1010.380(d)(1). Despite comments from some that FinCEN should adopt a definition of substantial control drawn from another BOI disclosure regime, such as the UK's PSC Register, FinCEN believes that its proposed definition of ''substantial control,'' which, as discussed above, is based on established legal principles and usages of this term in other contexts, provides specificity to the regulated community while being flexible enough to account for unique ways in which individuals can exercise substantial control over an entity.

FinCEN seeks comments on the overall proposed approach to substantial control as well as on the specific indicators and examples, including whether they are clear and useful. FinCEN welcomes additional suggestions for possible indicators and specific language in this regard.

ii. Ownership or Control of Ownership Interests

The other component of the definition of beneficial owner concerns individuals who own or control 25 percent of a reporting company's ownership interests. The CTA defines a beneficial owner to include ''an individual who . . . owns or control not less than 25 percent of the ownership interests of the entity.'' [110] Proposed 31 CFR 1010.380(d)(3)(i) provides that ''ownership interests,'' for the purposes of this rule, would include both equity in the reporting company and other types of interests, such as capital or profit interests (including partnership interests) or convertible instruments, warrants or rights, or other options or privileges to acquire equity, capital, or other interests in a reporting company. Debt instruments are included if they enable the holder to exercise the same rights as one of the specified equity or other interests, including the ability to convert the instrument into one of the specified equity or other interests. This is similar to the U.S. Securities and Exchange Commission's definition of ''equity security'' in 17 CFR 230.405.[111] FinCEN proposes to adopt this understanding as a way of ensuring that the underlying reality of ownership, not the form it takes, drives the identification of beneficial owners. The approach also thwarts the use of complex ownership structures and ownership vehicles other than direct equity ownership to obscure a reporting company's real owners.

Proposed 31 CFR 1010.380(d)(3)(ii) identifies ways in which an individual may ''own or control'' interests. It restates statutory language that an individual may own or control an ownership interest directly or indirectly. It also gives a non-exhaustive list of examples to further emphasize that an individual can own or control ownership interests through a variety of means. FinCEN's proposed approach requires reporting companies to consider all facts and circumstances when making determinations about who owns or controls ownership interests. FinCEN believes that the specific examples will illustrate what FinCEN believes to be relevant to an ownership-interests analysis. For example, with proposed 31 CFR 1010.380(d)(3)(ii)(A) (joint ownership), FinCEN's objective is to highlight that an individual may reach the 25 percent threshold by jointly owning or controlling with one or more other persons an undivided ownership interest in a reporting company.

Proposed 31 CFR 1010.380(d)(3)(ii)(C) specifies that an individual may directly or indirectly own or control an ownership interest in a reporting company through a trust or similar arrangement. The proposed language aims to make clear that an individual may own or control ownership interests by way of the individual's position as a grantor or settlor, a beneficiary, a trustee, or another individual with authority to dispose of trust assets. In relation to trust beneficiaries in particular, FinCEN believes that it is appropriate to consider an individual as owning or controlling ownership interests held in trust if the individual is the sole permissible recipient of both income and principal from the trust, or has the right to demand a distribution of, or withdraw substantially all of the assets from, the trust. Other individuals with authority to dispose of trust assets, such as trustees, will also be considered as controlling the ownership interests held in trust, as will grantors or settlors that have retained the right to revoke the trust, or to otherwise withdraw the assets of the trust. FinCEN believes that these circumstances comport with the general understanding of ownership and control in the context of trusts and furthers the CTA's objective of identifying true beneficial owners regardless of formalities that may vary across different jurisdictions. However, FinCEN acknowledges that these concepts do not map easily onto every trust or similar arrangement. Accordingly, FinCEN is seeking comment on its general approach to the attribution of ownership interests held in trust to certain individuals, as well as the particular circumstances in which individuals may be considered to own or control ownerships interests held in trust. More broadly, FinCEN seeks comments on whether these and the other proposed examples of how one might own or control ownership interests are clear and useful, and which, if any, require elaboration.

Proposed 31 CFR 1010.380(d)(3)(iii) concludes the ownership interest section with general guidance on determining whether an individual owns or controls 25 percent of the ownership interests of a reporting company. An individual's ownership interests of the reporting company shall include all ownership interests of any class or type, and the percentage of such ownership interests that an individual owns or controls shall be determined by aggregating all of the individual's ownership interests in comparison to the undiluted ownership interests of the company. FinCEN believes this approach would further the CTA's objective of identifying true beneficial owners by accounting for complex ownership or investment structures. FinCEN seeks comments on this approach to the 25 percent calculation, including any issues that FinCEN should consider in relation to reporting companies with more complex ownership structures.

FinCEN considered alternative approaches to identifying beneficial owners according to their ownership interests, in particular the approach laid out in the ownership prong of the CDD Rule. In that approach, only ''equity interests'' are relevant, joint ownership is not explicitly addressed, and assets in trust are deemed to be owned by their

[110] 31 U.S.C. 5336(a)(3)(A)(ii).

[111] Securities Act Rule 405.

trustees.[112] The ownership prong of the CDD Rule is well known, easily understood, and easy to comply with. Many commenters urged FinCEN to adopt the CDD Rule approach to trusts. However, FinCEN has declined to follow the CDD Rule approach for a combination of reasons.

First, as discussed above, the CTA does not require following the CDD Rule by default. The same statutory interpretation arguments that led FinCEN to believe that the CDD Rule is not an appropriate standard in connection with substantial control apply equally to the subject of ownership interests.

Second, the CDD Rule does not provide transparency with respect to complex ownership structures, extensive use of trusts, voting arrangements among owners, golden shares entitling their owners to voting rights disproportionate to their equity stake, and other mechanisms that can obscure the connection between an individual owner and a reporting company. Therefore, it is not at all clear that the CDD Rule results in the identification of all individuals who should be identified as 25 percent owners. Instead, the CDD Rule standard could permit obfuscatory behavior. In connection with trusts, for example, FinCEN believes that requiring the reporting only of the trustee under the ownership interests component would promote the misuse of trusts to hide beneficial ownership interests and complicate the ability of reporting companies to comply with the CTA and the proposed rule. As with the definition of substantial control, FinCEN believes its proposed approach would provide law enforcement with a more accurate and complete picture of an entity's true ownership, regardless of formalities.

Finally, FinCEN considered the burden this proposed approach would have on reporting companies. FinCEN is mindful of the effect of new regulations on small businesses, given their critical role in the U.S. economy and the special consideration that Congress and successive administrations have mandated that federal agencies should give to small business concerns. FinCEN expects that most reporting companies that are small businesses will have simple ownership structures with easily identifiable beneficial owners, thereby minimizing the potential burden on such entities. FinCEN's expectation is supported by a recent empirical analysis on the compliance burden that resulted from the creation of a beneficial ownership registry in the UK. In its post-implementation review of the PSC Register, the UK Government found that only 13% of companies had three or more beneficial owners.[113] It also found that the mean overall cost of compliance for small and micro businesses (defined as businesses with less than 50 employees) to file an initial report and provide required updates was £265 (approximately $358 at current exchange rates).[114] Notably, the UK's beneficial owner database is public and the UK requires businesses to provide considerably more information about each beneficial owner. This suggests that the reporting burden of FinCEN's approach may be materially less than the burden of compliance borne by small businesses and other reporting companies in the UK since the establishment of the PSC Register. FinCEN seeks comments on these considerations, particularly regarding its assessment of the effect on small businesses based on the assessment of the UK's implementation of its register. FinCEN further welcomes specific data on this topic.

Entities for which relative burden may be higher are likely very small entities with complex structures. As noted above, FinCEN believes that most reporting companies will not have complex ownership structures, and that the few that do previously chose their structures recognizing that costs associated with legal and tax advice and other filing and compliance obligations might be higher as a result. Moreover, in FinCEN's experience administering the BSA and other AML efforts, small-but-complex entities often are the highest risk for money laundering, terrorist financing, and other illicit financial activity. Indeed, both the CTA's statutory text and legislative history indicate that Congress was concerned with ensuring effective BOI reporting for these entities. Thus, in FinCEN's experience, such a reporting burden is justified because these are the entities most at risk for abuse of the corporate form and, therefore, an additional compliance burden is necessary to make the BOI database ''highly useful to law enforcement'' under the statute.

iii. Exceptions to Definition of Beneficial Owner

Proposed 31 CFR 1010.380(d)(4) describes five exceptions to the definition of beneficial owners that are included in the CTA. These exceptions relate to minor children, nominees or other intermediaries, employees, inheritors, and creditors. Proposed 31 CFR 1010.380(d)(4) mirrors the statutory text with additional clarification to ensure that reporting companies identify real parties in interest, not only the nominal beneficial owners.

a. Minor Children

In the case of minor children, consistent with the statute, proposed 31 CFR 1010.380(d)(4)(i) states that the term beneficial owner does not include a minor child, provided that the reporting company reports the required information for a parent or legal guardian of the minor child.[115] Proposed 31 CFR 1010.380(b)(3)(ii) provides additional clarification regarding the manner in which a reporting company would need to provide information of a parent or legal guardian.

b. Nominees

With respect to the exception for an individual acting as a nominee, intermediary, custodian, or agent on behalf of another individual, FinCEN notes that the statute affirms that reporting companies must report real parties in interest who exercise control indirectly.[116] In implementing this statutory exception, FinCEN emphasizes the obligation of a reporting company to report identifying information of the individual on whose behalf an apparent beneficial owner is acting, not the apparent beneficial owner.

c. Employees

The CTA further exempts from the definition of a beneficial owner an employee of a reporting company, ''acting solely as an employee,'' whose ''control over or economic benefits from'' a reporting company are derived solely from the employment status of the person. Proposed 31 CFR 1010.380(d)(4)(iii) adopts the statutory language, with two clarifications. First, the word ''substantial'' is added to modify ''control'' to clarify that the control referenced in the exception is the same type of ''substantial control'' over the reporting company referenced

[112] *See* 31 CFR 1010.230(d)(3) (CDD Rule provision stating that ''[i]f a trust owns directly or indirectly, through any contract, arrangement, understanding, relationship or otherwise, 25 percent or more of the equity interests of a legal entity customer, the beneficial owner for purposes of [the definition of beneficial owner] shall mean the trustee.'').

[113] *See* United Kingdom Department for Business, Energy & Industrial Strategy, *Review of the Implementation of the PSC Register,* (March 2019), p. 4, available at *https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/822823/review-implementation-psc-register.pdf.*

[114] *Id.,* Table 3.9.

[115] 31 U.S.C. 5336(a)(3)(B)(i).

[116] 31 U.S.C. 5336(a)(3)(B)(ii).

in the definition of beneficial owner and defined in the regulations. Second, the proposed rule clarifies that a person acting as a senior officer of a reporting company could not avail himself or herself of the exception. Under the CTA, only employees who are ''acting solely as an employee'' may be exempt. The statute does not, however, specify what it means to act ''solely as an employee,'' and this phrase may be viewed as ambiguous. FinCEN proposes to address this ambiguity by distinguishing between employees and senior officers and by clarifying that a person acting as a senior officer of an entity is not a person acting ''solely as an employee.'' In the common law of agency and corporate law, senior officers have long been distinguished from employees, with officers often regarded as principals and employees regarded as agents.[117] Senior officers may be considered employees in some contexts, such as for certain tax purposes where the distinction between officers and employees may be less relevant. But in contexts focused more on an individual's ownership or control of an entity, such as disclosure requirements or imputation of conduct for various purposes, senior officers are often treated differently.[118] In the context of the CTA's exceptions from the definition of beneficial owner, FinCEN believes that distinguishing employees from senior officers would appropriately ensure that individuals whose functions enable them to exercise substantial control over an entity in many important ways are reported as beneficial owners.[119] Exempting senior officers from the definition of beneficial owner would seem to frustrate the CTA's objective of identifying individuals who exercise substantial control over an entity, and who may thereby be in a position to use the entity for illicit purposes. FinCEN welcomes comments on the exclusion of senior officers from this exemption.

d. Inheritance

The inheritor exception restates statutory text with one added clarification. The CTA's definition of beneficial owner excludes ''an individual whose only interest . . . is through a right of inheritance.'' [120] Proposed 31 CFR 1010.380(d)(4)(iv) clarifies that this exception refers to a ''future'' interest associated with a right of inheritance, not a present interest that a person may acquire as a result of exercising such a right. In proposing this addition, FinCEN seeks to emphasize that once an individual has inherited an ownership interest in an entity, that individual owns it. Individuals who may in the future come to own ownership interests in an entity through a right of inheritance do not have ownership until the inheritance occurs. But once an ownership interest is inherited and comes to be owned by an individual, that individual has the same relationship to an entity as any other individual who acquires an ownership interest through another means. FinCEN thus believes this clarification is necessary to avoid exempting individuals on the basis of how ownership interests are acquired.

e. Creditors

Finally, the CTA's definition of beneficial owner excludes a creditor of a reporting company unless the creditor exercises substantial control over the entity or owns or controls 25 percent of the entity's ownership interests.[121] Based on FinCEN's understanding that the overarching intent of the CTA is to identify real parties in interest, FinCEN interprets this exception to mean that the mere fact that an individual is a creditor cannot make that individual a beneficial owner of the reporting company: What is relevant is whether the individual exercises substantial control of the reporting company or owns or controls 25 percent of the reporting company's ownership interests. However, the CTA does not define the term ''creditor.'' Drawing from U.S. tax law, proposed 31 CFR 1010.380(d)(4)(v) clarifies that an exempt creditor is an individual who meets the definition of beneficial owner in proposed 31 CFR 1010.380(d) *solely* through rights or interests in the reporting company for the payment of a predetermined sum of money, such as a debt and the payment of interest on such debt. The proposed rules clarify that any capital interest in the reporting company, or any right or interest in the value of the reporting company or its profits, would not be considered rights or interests for payment of a predetermined sum, regardless of whether they take the form of a debt instrument. Accordingly, if an individual has a right or ability to convert the right to payment of a predetermined sum to any form of ownership interest in the company, that would prevent that individual from claiming the creditor exception. FinCEN believes this approach is necessary to prevent individuals from obscuring their ownership of a company by structuring their ownership interests in the form of debt, when in substance they hold an interest with characteristics of equity.

One commenter noted that it is not uncommon for creditors to have so-called ''equity kickers'' allowing some form of sharing in cash flow or capital gains in addition to fixed interest. FinCEN believes such arrangements would not be within the proposed creditor exemption because the payments would not be for a predetermined sum. Therefore, it would be considered an ownership interest that could aggregate to a reportable ownership interest. FinCEN welcomes further comments on whether there are specific creditor or security interests that involve equity-like attributes that should be considered as within the creditor exemption and how such exemptions could be integrated into the proposed rule, including an explanation of how such interests would not affect the proposed rule's ability to generate a highly useful database. FinCEN also welcomes comments on whether the proposed rules implementing these statutory exceptions are sufficiently clear, and which, if any, require further clarification.

C. Company Applicant

A reporting company would be required to report identifying information about a company applicant under proposed 31 CFR 1010.380(a)(1). Proposed 31 CFR 1010.380(e) defines a company applicant as any individual who files a document that creates a domestic reporting company or who first registers a foreign reporting

[117] *See, e.g., Goldman* v. *Shahmoon,* 208 A.2d 492, 494 (D. Ch. 1965) (''It is clear that the terms officers and agents are by no means interchangeable. Officers as such are the corporation. An agent is an employee . . . .''); *Rosenblum* v. *New York Cent. R. Co.,* 57 A.2d 690, 691 (Pa. Sup. Ct. 1948) (distinguishing ''regular employees'' and ''mere agents'' from ''executive officers'').

[118] *See, e.g.,* 12 U.S.C. 308.602 (debarment of accounting firms); 15 U.S.C. 78p (requiring disclosures from directors, officers, and principal stakeholders); 15 U.S.C. 77aa (disclosure of directors and officers in securities issuer's registration statement); 22 CFR 126.7 (revocation of export licenses on the basis of senior officer conduct).

[119] In corporate and agency-law contexts, a formal or functional position as a senior officer can be a key indicator of an individual's substantial control over an entity. *See United States ex rel. Vavra* v. *Kellong Brown & Root, Inc.,* 848 F.3d 366, 374 (5th Cir. 2017); *see also, e.g.,* U.S. Sentencing Commission Guidelines, U.S.S.G. sec. 8A1.2 cmt. 3(B) (' 'High-level personnel of the organization, means individuals who have substantial control over the organization or who have a substantial role in the making of policy within the organization. The term includes: A director; an executive officer; an individual in charge of a major business or functional unit of the organization, such as sales, administration, or finance; and an individual with a substantial ownership interest.'').

[120] 31 U.S.C. 5336(a)(3)(B)(iv).

[121] 31 U.S.C. 5336(a)(3)(B)(v).

company with a secretary of state or similar office in the United States.

The proposed definition of a company applicant would also include any individual who directs or controls the filing of such a document by another person. This additional requirement is designed to ensure that the reporting company provides information on individuals that are responsible for the decision to form a reporting company given that, in many cases, the company applicant may be an employee of a business formation service or law firm, or an associate, agent, or family member who is filing the document on behalf of another individual. In such a case, the individual directing or controlling the formation of a legal entity should not be able to remain anonymous simply by directing another individual to file the requisite paperwork, and must therefore disclose his or her identity to FinCEN along with the individual that made the filing. FinCEN believes that this additional information about the person directing or controlling the formation or registration of the reporting company will be highly useful to law enforcement, which may be able to draw connections between and among seemingly unrelated reporting companies, beneficial owners, and company applicants based on this additional information. In addition, FinCEN believes that it will be better positioned to investigate the submission of inaccurate BOI if it is able to identify both the individual who submitted the report and the person who directed or controlled that activity. It may also give a company applicant executing the filing an incentive to reasonably satisfy himself or herself that the BOI being submitted to FinCEN at the direction of another is accurate because they could also be held accountable, thereby improving data quality. FinCEN believes that the burden of this reporting requirement is minimal because the identity of any individual that meets the definition of ''company applicant''—both the person submitting the report and the person directing it—should be readily available to reporting companies. FinCEN welcomes comments on this proposal.

D. Reporting Company

The CTA defines a reporting company as ''a corporation, limited liability company, or other similar entity'' that is either (1) ''created by the filing of a document with a secretary of state or a similar office under the law of a State or Indian Tribe;'' or (2) ''formed under the law of a foreign country and registered to do business in the United States by the filing of a document with a secretary of state or a similar office under the laws of a State or Indian Tribe.'' [122]

To facilitate application of the statutory definition of reporting company, proposed 31 CFR 1010.380(c)(1) defines two new terms: ''Domestic reporting company'' and ''foreign reporting company.''

i. Domestic Reporting Company

Consistent with the CTA's statutory language, FinCEN proposes to define a domestic reporting company to include: (1) A corporation; (2) a limited liability company; or (3) other entity that is created by the filing of a document with a secretary of state or a similar office under the law of a state or Indian Tribe.[123] Because corporate formation is governed by state or Tribal law, and because the CTA does not provide independent definitions of the terms ''corporation'' and ''limited liability company,'' FinCEN intends to interpret these terms by reference to the governing law of the domestic jurisdiction in which a reporting company that is a corporation or limited liability company is formed. For clarity and ease of administration, the proposed rule defines ''reporting company'' to include all domestic corporations and limited liability companies based on FinCEN's understanding that all corporations and limited liability companies are created by the filing of a document with a secretary of state or a similar office under the law of a state or Indian Tribe. FinCEN, however, invites comment on whether this understanding is accurate.[124]

The proposed rule does not separately define the statutory clause ''other similar entity,'' but rather reflects FinCEN's interpretation of ''other similar entity'' as referring to any entity that is created by the filing of a document with a secretary of state or similar office, the only common characteristic the statute identifies. FinCEN considered alternative approaches when determining how to interpret ''similar entity,'' but those alternatives do not appear to accord with Congress's objective of enabling law enforcement and others to counter illicit activity conducted through such entities, or are otherwise unworkable.[125] For example, FinCEN considered defining ''similar entity'' narrowly to include entities that limit their owners' personal liability under state or Indian Tribe law, but it is not clear how this limitation would align with the purpose of the statute because legal entities can be used by malign actors to further or hide illicit activity regardless of whether they enjoy limited liability. Alternatively, ''similar entity'' might be defined somewhat more broadly to include entities that are legally distinct from their natural person owners, but this definition would depend on varying state law and could be difficult to apply. Moreover, any approach that unduly narrows the scope of the reporting company definition could exclude entities that malign actors can use to obscure their true ownership or control structures, thereby limiting the usefulness of the reported information for law enforcement, tax authorities, and other stakeholders. In passing the CTA, Congress was concerned with entities that can be created without needing to report who their beneficial owners are.[126] And Congress was aware that malign actors take advantage of these entities to conceal their involvement in illicit activity.[127] As explained above, this creates a significant hurdle for investigators who are forced to use time-consuming and resource-intensive tools to try to obtain this information, if it can be obtained at all. An unduly narrow interpretation of ''similar entity'' could therefore impede a key objective of the CTA. Thus, FinCEN proposes to focus on the act of filing to create the entity as the determinative factor in defining entities besides corporations and limited liability companies that are also reporting companies. FinCEN welcomes comments on this approach.

In general, FinCEN believes the proposed definition of domestic reporting company would likely include limited liability partnerships, limited liability limited partnerships, business trusts (a/k/a statutory trusts or

[122] 31 U.S.C. 5336(a)(11)(A)(i)–(ii).

[123] 31 U.S.C. 5336(a)(11)(A)(i)–(ii).

[124] A 2016 World Bank guide to beneficial ownership information in the United States notes that the actual mechanics of creating a corporation or limited liability company may vary slightly from state to state, but are generally very similar. Specifically, the guide notes that ''[f]or corporations, every state requires the filing of a corporate governance document (called the 'articles of incorporation,' 'certificate of incorporation,' or 'charter') with the state filing office, together with the payment of a filing fee.'' It further states that ''[f]or limited liability companies. . . [e]very state requires the filing of an organization document (generally called a 'certificate of organization,' 'certificate of formation,' or 'articles of organization') which constitutes proof of its organization, form, and existence.'' World Bank G–20 Anti-Corruption Working Group, *Guide to Beneficial Ownership Information: Legal Entities and Legal Arrangements (United States)* (2016), p. 3, available at *https://star.worldbank.org/resources/beneficial-ownership-guide-united-states-america-2016.* (accessed on November 1, 2021).

[125] CTA, Section 6402(5)(D).

[126] CTA, Section 6402(2).

[127] CTA, Section 6402(3)–(4).

Massachusetts trusts), and most limited partnerships, in addition to corporations and limited liability companies (LLCs), because such entities appear typically to be created by a filing with a secretary of state or similar office. FinCEN estimates that there are now approximately 30 million such entities in the United States, and that approximately three million such entities are created in the United States each year.[128] FinCEN understands that state and Tribal laws may differ on whether certain other types of legal or business forms—such as general partnerships, other types of trusts, and sole proprietorships—are created by a filing, and therefore does not propose to categorically include any particular legal forms other than corporations and limited liability companies within the scope of the definition. FinCEN invites commenters to provide information on state and Indian Tribe legal entity formation practices and requirements for consideration.

ii. Foreign Reporting Company

Proposed 31 CFR 1010.380(c)(1)(ii) defines a foreign reporting company as any entity that is a corporation, limited liability company, or other entity that is formed under the law of a foreign country and that is registered to do business in the United States by the filing of a document with a secretary of state or equivalent office under the law of a state or Indian Tribe. Similar to the treatment of the phrase ''corporation, limited liability company, or other similar entity'' for domestic reporting companies, FinCEN intends to interpret these terms by reference to the requirement to register to do business in the United States by the filing of a document in a state or Tribal jurisdiction. The proposed regulation otherwise tracks the statutory text except to clarify that registration to do business in any state or Tribal jurisdiction suffices as registration to do business in the United States.

As with domestic reporting companies that are ''created by a filing,'' there may be questions about how the ''registered to do business'' standard applies to different entity types across state and Tribal jurisdictions. The phrase ''registered to do business'' may capture more entities than ''created by the filing of a document'' because typically a jurisdiction within the United States will require any legal entity formed under the law of any other jurisdiction—including another jurisdiction within the United States—to register to do business as a ''foreign'' entity if it engages in certain types of activities.[129] FinCEN welcomes comments on what activities will trigger foreign entity registration requirements in particular state or Tribal jurisdictions, whether compliance with those requirements constitutes ''registering to do business,'' and whether FinCEN should further clarify the ''registered to do business'' requirement.

iii. Exemptions

The CTA specifically excludes from the definition of ''reporting company'' twenty-three types of entities.[130] The statute also authorizes the Secretary to exempt, by regulation, additional entities for which collecting BOI would neither serve the public interest nor be highly useful in national security, intelligence, law enforcement, or other similar efforts.[131] Except for the proposed clarifications discussed below, as well as minor alterations to paragraph structure and the addition of short titles, FinCEN proposes to adopt verbatim the statutory language granting the twenty-three specified exemptions. Each proposed short title summarizes the applicable exemptions, which cover securities issuers, domestic governmental authorities, banks, domestic credit unions, depository institution holding companies, money transmitting businesses, brokers or dealers in securities, securities exchange or clearing agencies, other Securities Exchange Act of 1934 entities,[132] registered investment companies and advisers, venture capital fund advisers, insurance companies, state licensed insurance producers, Commodity Exchange Act registered entities,[133] accounting firms, public utilities, financial market utilities, pooled investment vehicles, tax exempt entities, entities assisting tax exempt entities, large operating companies, subsidiaries of certain exempt entities, and inactive businesses. These categories of exempt entities either are already generally subject to substantial Federal or state regulation under which their beneficial ownership may be known.

While most of the reporting company exemptions are straightforward, several contain ambiguous language that FinCEN proposes to clarify in its regulations. FinCEN first proposes to define ''public utility'' [134] via reference to the Internal Revenue Code definition of ''regulated public utility'' at 26 U.S.C. 7701(a)(33)(A). Under this definition, a ''public utility'' would generally be a corporation that furnishes or sells electric energy, gas, water, or sewage disposal services, or transportation, at rates established or approved by a government body. Using this preexisting definition should promote predictability and continuity across Treasury and other federal regulations, which may reduce compliance burdens that would otherwise arise from definitional differences among regulatory regimes.

Proposed 31 CFR 1010.380(c)(2)(xxi) clarifies an exemption relating to what the proposed regulations refer to as ''large operating companies.'' An entity falls into this category, and therefore is not a reporting company, if it: (1) ''Employs more than 20 employees on a full-time basis in the United States''; (2) ''filed in the previous year Federal income tax returns in the United States demonstrating more than $5,000,000 in gross receipts or sales in the aggregate,'' including the receipts or sales of other entities owned by the entity and through which the entity operates; and (3) ''has an operating presence at a physical office within the United States.'' [135] Under the proposed regulations, an entity with an ''operating presence at a physical office within the United States'' would be one for which the physical office is owned or leased by the entity, is not a residence, and is not shared space (beyond being shared with affiliated entities)—in short, a genuine working office of the entity. In the exemption, FinCEN also proposes to clarify what it means to employ someone on a full-time basis through reference to the Internal Revenue Service definition of ''full-time employee'' and related determination methods at 26 CFR 54.4980H–1(a)(21) and 54.4980H–3. These regulations generally count as a full-time employee anyone employed an average of at least 30 service hours per week or 130 service hours per month, with adaptations for non-hourly employees. As with the ''public utility'' definition, FinCEN is borrowing the IRS concept to promote regulatory consistency and because most large operating companies should already be familiar with it from compliance with the Affordable Care Act.[136] Therefore, FinCEN believes its

[128] See Section VI of this NPRM for more information on these estimates.

[129] *See, e.g.,* Cal. Corp. Code sec. 2107, Del. Code tit. 8, sec. 371, New York Consolidated Laws (N.Y.C.L.), Business and Corporations Code secs. 1301–1305, Mass. Gen. L. Ann. Ch. 156D, secs. 15.01–15.03, Va. Code tit. 13.1, secs. 757–759.

[130] *See* 31 U.S.C. 5336(a)(11)(B)(i)–(xxiii).

[131] *See* 31 U.S.C. 5336(a)(11)(B)(xxiv).

[132] *See* 15 U.S.C. 78l.

[133] *See* 15 U.S.C. 78o(d).

[134] 31 U.S.C. 5336(a)(11)(B)(xvi).

[135] 31 U.S.C. 5336(a)(11)(B)(xxi).

[136] *See* 26 U.S.C. 4980H.

proposed approach will help minimize compliance burdens.

Regarding the $5,000,000 filing threshold, FinCEN proposes to make clear that the relevant filing may be a federal income tax or information return, and that the $5,000,000 must be 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 entities that are part of an affiliated group of corporations within the meaning of 26 U.S.C. 1504 that filed a consolidated return, FinCEN proposes that the applicable amount should be the amount reported on the group's consolidated return. FinCEN's proposal to exclude gross receipts or sales from sources outside the United States reflects the CTA's domestic focus in requiring that a qualifying entity have filed ''Federal tax returns *in the United States.*'' [137] This focus on the United States is reinforced in other prongs requiring that an entity's 20 or more employees be employed in the United States, and that the entity have an operating presence at an office within the United States.[138] FinCEN believes that focusing on gross receipts or sales from U.S. sources would maintain consistency with the exemption's overall United States-centric approach, but welcomes comments on the feasibility of applying this test to only U.S.-sourced gross receipts.

Proposed 31 CFR 1010.380(c)(2)(xxii) would clarify the exemption for entities in which ''the ownership interests are owned or controlled, directly or indirectly, by 1 or more [specified entity types that do not qualify as reporting companies].'' [139] FinCEN is calling this the ''subsidiary exemption,'' and interprets the definite article ''the'' in the quoted statutory text as requiring an entity to be owned entirely by one or more specified exempt entities in order to qualify for it. In addition to expressing greater fidelity to the statutory language, this interpretation also prevents entities that are only partially owned by exempt entities from shielding all of their ultimate beneficial owners—including those that beneficially own the entity through a non-exempt parent—from disclosure.

The last category of exempt entities for which FinCEN proposes to clarify ambiguous statutory language is the exemption for ''dormant entities'' that meet the criteria provided at 31 U.S.C. 5336(a)(11)(B)(xxiii). Under the CTA, the exemption applies to any entity: (1) ''In existence for over 1 year;'' (2) that is not engaged in active business; (3) that is not owned, directly or indirectly, by a foreign person; (4) that has not, in the preceding 12-month period, experienced a change in ownership or sent or received more than $1,000; and (5) that does not otherwise hold assets of any type.

The phrase ''in existence for over 1 year'' is ambiguous because the CTA did not specify whether it refers to entities in existence for over one year *at the time of the CTA's enactment* or to entities in existence for over one year at *any time the statute is applied.* While other prongs of the exemption use the present tense (''is'' not engaged in active business; ''does'' not hold assets) and such present-tense language generally does not include the past, the first prong notably lacks any verb, much less one in the present tense.[140] Moreover, both the CTA's text and its legislative history suggest that the exemption was understood to be a ''grandfathering'' provision for entities in existence before the CTA's enactment. Another CTA provision expressly refers to entities subject to this exemption as ''exempt grandfathered entities.'' [141] And in a floor statement made just before the passage of the CTA, Senator Brown explained that ''[t]he exemption for dormant companies is intended to function solely as a grandfathering provision that exempts from disclosure only those dormant companies in existence prior to the bill's enactment.'' [142] He added, ''No entity created after the date of enactment of the bill is intended to qualify for exemption as a dormant company.'' [143] It therefore appears reasonable to interpret the dormant entity exemption as a grandfathering provision applicable only to entities in existence for over one year at the time the CTA was enacted. This interpretation also limits opportunities for bad actors to exploit the exemption by forming exempt shelf companies for later use.

FinCEN notes that this exemption's first prong may appear to bear some similarity to its fourth, with the latter requiring an entity to have not experienced a change in ownership or sent or received more than $1,000 ''in the preceding 12-month period.'' However, FinCEN does not propose to interpret this language as applying to the 12-month period before the enactment of the CTA. This fourth prong not only uses different language from the first, but also focuses on repeatable actions by the entity rather than its creation date. Requiring an entity to be in existence one year before the CTA's enactment is consistent with an understanding of the exemption as a grandfathering provision for entities created before that date because creation is a one-time event. Changes in ownership and funds transfers, by contrast, are not necessarily events that occur once and then never again. They may occur at any time after an entity comes into existence. For these actions, we do not believe that the 12-month period prior to the enactment of the CTA is more significant than any other subsequent 12-month period. If a company experiences an ownership change or transfers more than $1,000 at some later date after the CTA's enactment, we do not see a reason why the company should be subject to the exemption simply because it did not take those actions for the 12 months prior to the CTA's enactment. FinCEN therefore proposes to interpret the first prong of the dormant entity exemption as applying to the one-year period before enactment, but FinCEN understands the fourth prong as applying to any 12-month period.

In addition to the exemptions Congress specified in the CTA, Congress also provided an exemption for ''any entity or class of entities that the Secretary of the Treasury, with the written concurrence of the Attorney General and the Secretary of Homeland Security, has, by regulation, determined should be exempt.'' [144] To make such a determination, there must be a finding that requiring beneficial ownership information ''would not serve the public interest'' and ''would not be highly useful in national security, intelligence, and law enforcement agency efforts to detect, prevent, or prosecute money laundering, the financing of terrorism, proliferation finance, serious tax fraud, or other crimes.'' [145] Commenters to the ANPRM suggested creating exemptions for state-licensed accounting companies; federally regulated health care

[137] 31 U.S.C. 5336(a)(11)(B)(xxi)(II) (emphasis added).

[138] 31 U.S.C. 5336(a)(11)(B)(xxi)(I).

[139] 31 U.S.C. 5336(a)(11)(B)(xxii) (emphasis added).

[140] *See Carr* v. *United States,* 130 S. Ct. 2229, 2236 (2010).

[141] 31 U.S.C. 5336(b)(2)(E).

[142] Senator Sherrod Brown, *National Defense Authorization Act,* Congressional Record 166:208 (December 9, 2020), p. S7311, available at *https://www.govinfo.gov/content/pkg/CREC-2020-12-09/pdf/CREC-2020-12-09.pdf.*

[143] *Id.*

[144] 31 U.S.C. 5336(a)(11)(B)(xxiv).

[145] *Id.*

institutions; limited liability companies owned by spouses solely to hold real property; certain Tribal entities; certain commodity pools, additional pooled investment vehicles, additional investment advisors, and family offices; companies with less than a defined capitalization or revenue threshold; well-established businesses; and entities owned by U.S. persons with significant asset holdings held in custody at regulated financial institutions. Many of these commenters, however, did not explain why they believe their proposed additions would meet the statutory standard. Other commenters from civil society organizations recommended construing existing exemptions narrowly and not introducing new exemptions at this time. While the proposed rule would not create additional exemptions, FinCEN will continue to consider whether any additional exemptions would be appropriate. FinCEN welcomes comments on this approach and whether to adopt exemptions beyond those specifically required by statute. FinCEN also welcomes comments on how, when considering a new exemption, the agency should make the statutorily required determinations that collecting beneficial ownership information for a potentially exempt entity or class of entities ''would not serve the public interest'' and also ''would not be highly useful in national security, intelligence, and law enforcement agency efforts to detect, prevent, or prosecute money laundering, the financing of terrorism, proliferation finance, serious tax fraud, or other crimes.''

Many commenters also encouraged FinCEN to require exempt entities to file a report in order to claim an exemption. Such a requirement may make FinCEN's BOI database significantly more useful by making it clear which entities did not file BOI because they intentionally claimed exemptions and which simply failed to satisfy the reporting obligation. Many other commenters opposed such a requirement, arguing it was inconsistent with both the statutory language of the CTA and the CTA's legislative history, and likely to be highly burdensome. One commenter suggested that a reasonable alternative to any affirmative exemption filing requirement would be a requirement to provide an exemption certification to FinCEN only upon request from the bureau or another applicable governmental authority. However, the commenter did not identify the statutory authority that would permit FinCEN to impose such a requirement. FinCEN invites comment on any applicable statutory authority. At least one commenter noted that FinCEN should permit exempt entities to voluntarily file exemption certifications. FinCEN invites comment on the appropriateness of inviting such voluntary filings.

E. Timing of Reports; Update or Correction of Reports

i. Timing of Initial Reports

The CTA describes the filing deadlines for both reporting companies in existence prior to the effective date of the regulations and for reporting companies formed or registered after the effective date. The provision at 31 U.S.C. 5336(b)(1)(B) provides that any reporting company that has been formed or registered before the effective date of the reporting regulations shall, in a timely manner, and not later than two years after the effective date of the reporting regulations, submit to FinCEN a report that contains the information described in 31 U.S.C. 5336(b)(2). Separately, 31 U.S.C. 5336(b)(1)(C) provides that in accordance with regulations prescribed by the Secretary, any reporting company that has been formed or registered after the effective date of the regulations shall, at the time of formation or registration, submit to FinCEN a report that contains the information described in 31 U.S.C. 5336(b)(2).

Thus, the CTA requires FinCEN to prescribe regulations for exactly when reporting companies must file. The proposed regulations elaborate and clarify these filing deadlines in a manner that seeks to both minimize burdens on filers and to advance the objective of providing a timely and accurate database of highly useful information for authorized users. For newly formed or registered companies, proposed 31 CFR 1010.380(a)(1)(i) specifies that a domestic reporting company formed on or after the effective date of the regulation shall file a report within 14 calendar days of the date it was formed as specified by a secretary of state or similar office. Proposed 31 CFR 1010.380(a)(1)(ii) specifies that any entity that becomes a foreign reporting company on or after the effective date of the regulation shall file a report within 14 calendar days of the date it first became a foreign reporting company. Both proposed rules are intended to minimize the compliance burden by providing a bright-line rule as well as a reasonable period of time for newly formed or registered reporting companies to collect and report information from their beneficial owners and company applicants. At the same time, FinCEN seeks to compile a timely and highly useful database of beneficial ownership information available to law enforcement and other authorized users. FinCEN believes that allowing 14 days for such initial reporting to FinCEN will provide newly formed or registered reporting companies reasonable time to collect the information specified in proposed 31 CFR 1010.380(b)(1) from their beneficial owners and company applicants and to enter the required information about the company, its beneficial owners, and its company applicants into a form provided by FinCEN. Because the entity will be newly formed or registered, FinCEN anticipates that much of the required information will be readily available to the reporting company, and that the burden on the reporting company to collect and provide this information within 14 calendar days will be minimal. FinCEN also believes that requiring initial reports to be filed relatively quickly will help make the BOI reporting process a natural part of the formation or registration process, furthering the CTA's objective to ''set a clear, Federal standard for incorporation practices.'' [146] However, based on comments received in response to the ANPRM, FinCEN is aware there may be special circumstances in which a 14-calendar-day deadline to file an initial report is insufficient or impractical.[147] FinCEN welcomes additional comments on whether the 14-day deadline for newly formed or registered reporting companies to file an initial report is reasonable, and on whether there are situations in which this time is likely to be insufficient and proposals to address such situations.

For entities formed or registered before the effective date of the regulations, the CTA requires filing of beneficial owner and company applicant information ''in a timely manner,'' but no later than two years after the effective date of the final regulations. Proposed 31 CFR 1010.380(a)(1)(iii) would require any domestic reporting company created before the effective date of the regulation and any entity that became a foreign reporting company before the effective date of the regulation to file a report not later than one year after the effective date of the regulation. This approach balances the need for effective outreach and notice to preexisting companies with the need to collect

[146] CTA, Section 6406(5)(A).

[147] For example, one commenter noted that it may take longer than 14 days for an entity to complete necessary registrations or approvals that would exclude the entity from the definition of a ''reporting company.''

beneficial information in a timely manner and ensure a level playing field between all legal entities that constitute reporting companies.

A one-year reporting deadline is designed to provide reporting companies sufficient time to receive notice of the reporting requirement, conduct appropriate due diligence to determine the company applicant and beneficial owners, collect the required information from the beneficial owners and company applicants, and provide the required information about the company, its beneficial owners, and its company applicants to FinCEN. FinCEN intends to work with secretaries of state or similar offices and to leverage other communication channels to ensure that reporting companies in existence prior to the effective date of the regulations receive timely notice of and guidance on their BOI reporting obligations. In proposing a one-year deadline, FinCEN has sought to ensure that the database is highly useful to law enforcement by obtaining BOI for existing entities as soon as possible while also minimizing burdens on reporting companies and secretaries of state and similar offices that will need adequate time to comply with the new rules. FinCEN invites comments on whether the one-year period for preexisting reporting companies to file their initial report is reasonable.

Proposed 31 CFR 1010.380(a)(1)(iv) would require entities that are not reporting companies by virtue of one or more exemptions to file a report within 30 calendar days after the date on which the entity no longer meets any exemption criteria.[148] Whenever an entity does not meet the criteria for an exemption and otherwise qualifies as a reporting company, it becomes subject to the CTA's requirement that ''each reporting company shall submit to FinCEN a report'' of its BOI.[149] Although the CTA specifies when newly formed and existing reporting companies must file their reports,[150] it does not in most cases specify when a report must be filed by a previously exempt entity.[151] FinCEN believes that 30 days from the date an exemption ceases to apply is a reasonable time for once-exempt entities to file an initial report with FinCEN. Specifically, FinCEN believes that keeping the database updated and accurate is essential to ensuring it is highly useful and that 30 days provides sufficient time for entities that previously evaluated their eligibility for an exemption from the reporting requirements and claimed such an exemption to collect and file the required BOI with FinCEN. Again, FinCEN invites comments on whether this proposed timeframe is reasonable.

ii. Update or Correction of Reports

The provision at 31 U.S.C. 5336(b)(1)(D) requires reporting companies to update information submitted in prior reports to FinCEN in a timely manner, and not later than one year after the date on which there is a change with respect to any of the information described in 31 U.S.C. 5336(b)(2). The CTA also provides a safe harbor for persons who inadvertently submit inaccurate information in a report to FinCEN if they, among other things, voluntarily and promptly file a corrected report no later than 90 days after the submission of the inaccurate report.

FinCEN proposes to provide reporting companies with 14 calendar days to correct any inaccurate information filed with FinCEN from the date on which the inaccuracy is discovered and 30 calendar days to update with FinCEN information that has changed after filing. Specifically, proposed 31 CFR 1010.380(a)(3) would require reporting companies to file a report to correct inaccurately filed information within 14 calendar days after the date on which the reporting company becomes aware or has reason to know that *any* required information contained in any report that the reporting company filed with FinCEN was inaccurate when filed and remains inaccurate. This would include information about any beneficial owner and the reporting company. FinCEN believes 14 calendar days provides adequate time for a reporting company, after it knows or has reason to know that it has made an inaccurate filing, to conduct appropriate due diligence and correct the information. This time frame is intended to be consistent with the 14-calendar-day timeframe for a newly formed or registered reporting company to file an initial report with FinCEN. FinCEN believes quickly correcting errors is essential for fulfilling Congress's instruction that BOI reported to the agency be ''accurate, complete, and highly useful.'' [152] FinCEN anticipates this deadline will present a low burden on a reporting company that has discovered that inaccurate information has inadvertently been filed. It also provides incentives to reporting companies to ensure that accurate information is filed at the time an initial or updated submission is made to FinCEN, which is consistent with the broader goal of maintaining an accurate database for law enforcement and other authorized users.

Proposed 31 CFR 1010.380(a)(3) also notes that a corrected report filed under this paragraph within this 14-day period shall be deemed to satisfy 31 U.S.C. 5336(h)(3)(C)(i)(I)(bb) [153] if filed within 90 calendar days after the date on which an inaccurate report is filed.

The CTA provides that the deadline for updating information established by regulations must be ''in a timely manner'' but not later than one year after there was a change in the information. FinCEN is proposing a 30-calendar-day deadline for updating information that was accurate when filed but has subsequently changed. Specifically, proposed 31 CFR 1010.380(a)(2) would require reporting companies to file an updated report within 30 calendar days after the date on which there is any change with respect to any information previously submitted to FinCEN, including any change with respect to who is a beneficial owner of a reporting company, as well as any change with respect to information reported for any particular beneficial owner or applicant. This proposed rule would also apply to a reporting company that subsequently becomes eligible for an exemption from

[148] The trigger date is delayed by statute 180 days for legal entities described in section 501(c) of the Internal Revenue Code that lose their tax exemption. 31 U.S.C. 5336(a)(11)(xix)(I), proposed 31 CFR 1010.380(d)(2)(xix)(A).

[149] 31 U.S.C. 5336(b)(1)(A).

[150] 31 U.S.C. 5336(b)(1)(B); 5336(b)(1)(C).

[151] The CTA specifies that a report must be filed at the time an entity no longer meets the criteria for the subsidiary exemption and the grandfathered inactive business exemption. *See* 31 U.S.C. 5336(b)(2)(D), (E). However, in light of the express obligation in section 5336(b)(1)(A) for *all* reporting companies to file reports, FinCEN does not interpret the provisions focused on those two exemptions as relieving reporting companies of a filing obligation when they no longer meet the criteria for other exemptions. While the provisions focused on those two exemptions are arguably unnecessary in light of the general filing obligation, Congress may have included those provisions to make itself clear, as it may have had particular concern about those two exemptions. *See, e.g., Loving* v. *IRS,* 742 F.3d 1013, 1019 (D.C. Cir. 2014) (recognizing that, despite the general desire to avoid surplusage, ''lawmakers, like Shakespeare characters, sometimes employ overlap or redundancy so as to remove any doubt and make doubly sure'').

[152] 31 U.S.C. 5336(b)(4)(b)(ii).

[153] The provision at 31 U.S.C. 5336(h)(3)(C) provides that a person shall not be subject to civil or criminal penalties under 31 U.S.C. 5336(h)(3)(A) if the person has reason to believe that any report submitted by that person to FinCEN contains inaccurate information and, in accordance with regulations issued by the Secretary, voluntarily and promptly, and in no case later than 90 days after the date on which the person submitted the report, submits a report containing corrected information. However, this safe harbor does not apply if, at the time the person submits the report, the person acts for the purpose of evading the reporting requirements and has actual knowledge that any information contained in the report is inaccurate.

the reporting requirement after the filing of its initial report. One commenter noted it is important to avoid ambiguity as to whether a change in information superseded by subsequent changes within the 30-calendar-day window must be reported. That is to say, if a reporting company has a change in substantial control that triggers the 30-calendar-day window (*e.g.,* Individual A becomes a beneficial owner because they exercise substantial control over the reporting company), and then another change in substantial control within the 30-calendar-day window (*i.e.,* Individual A ceases to exercise substantial control over the reporting company), is the reporting company obliged to report anything about Individual A? In this situation, the proposed rule would require two separate reports from the reporting company, noting the addition and then the removal of Individual A as a beneficial owner. The first report would be due within 30 calendar days of Individual A gaining substantial control over the reporting company; the second report would be due within 30 days of Individual A ceasing to exercise substantial control over the reporting company.

FinCEN considers that keeping the database current and accurate is essential to keeping it highly useful, and that allowing reporting companies to delay mandatory updates by more than 30 days—or allowing them to report updates on an annual basis—could cause a significant degradation in accuracy and usefulness of the BOI. FinCEN also believes that a 30-calendar-day deadline is necessary to limit the possible abuse of shelf companies—*i.e.,* entities formed as generic corporations without assets and then effectively assigned to new owners. The longer updates are delayed, the longer a shelf company can be ''off the shelf'' without notice to law enforcement of the company's new beneficial owners, and without any notice to financial institutions that they should scrutinize transactions involving the company from the perspective of its new beneficial owners. FinCEN has considered the costs of the compliance burden that the 30-calendar-day timeframe may place on reporting companies in the regulatory analysis in Section VI below. To minimize those costs while ensuring that the database be highly useful, and also recognizing that this requirement is not based on when a reporting company knows or has reason to know that information in a prior report has changed, FinCEN proposes allowing 30 days for such filings, as opposed to the 14 calendar days provided for the correction of inaccurate reports. FinCEN believes the 30 day timeframe is sufficient time for a reporting company to identify and report updates to the information previously submitted to FinCEN. FinCEN recognizes that several commenters recommended a 180-day or 1-year period to allow updates of reports, and some suggested that FinCEN only use a shorter period for changes in beneficial owners while retaining a longer period for changes in the information reported about a particular beneficial owner. FinCEN selected a 30-calendar-day deadline rather than a longer deadline to update reports in an effort to consider both the burden on reporting companies and the desire of both law enforcement and financial institutions to have a database that is as up-to-date as possible.

The CTA further requires Treasury to conduct a review, in consultation with the Attorney General and the Secretary of Homeland Security, to evaluate the timing of updates to reports against the backdrop of benefits to law enforcement and burdens to filers.[154] FinCEN thus solicits comments on the burdens that the requirement to correct inaccurate information within 14 days and to update changed information within 30 days would impose on reporting companies, on the degree to which the accuracy and usefulness of the database depend upon prompt updates, and on any other relevant topics regarding the proposed rule's approach to changes or updates to a reporting company's reportable information.

Proposed 31 CFR 1010.380(a)(2)(i) provides that if a reporting company becomes exempt after filing an initial report, this change will be deemed a change requiring an updated report. The CTA does not expressly require a reporting company to file a report indicating that it has become exempt. Nevertheless, FinCEN believes the authority to require such a report is implicit in the CTA. As explained above, the express requirement in 31 U.S.C. 5336(b)(2)(A) to identify beneficial owners and applicants for each reporting company implies a requirement to identify the associated company. It likewise implies a requirement that the company identify itself *as a reporting company.* This implied representation that a company reporting its beneficial owners is in fact a reporting company is therefore among the information that 31 U.S.C. 5336(b)(2)(A) requires to be reported, albeit implicitly. And when there is a change with respect to any such information, 31 U.S.C. 5336(b)(1)(D) requires a report that updates the information relating to the change. FinCEN thus believes that it is consistent with the CTA to require a reporting company to file a report indicating that it has become exempt. Having notice that an entity that was a reporting company subsequently became eligible for an exemption to the definition of a ''reporting company'' will help FinCEN preserve enforcement resources by allowing it to focus on reporting companies that failed to report, rather than on entities that had previously filed reports but that became exempt from the requirement.

Proposed 31 CFR 1010.380(a)(2)(ii) provides that if an individual is a beneficial owner of a reporting company because the individual owns at least 25 percent of the ownership interests of the reporting company, and such beneficial owner dies, a change with respect to the required information will be deemed to occur when the estate of a deceased beneficial owner is settled. This proposed rule is intended to clarify that a reporting company is not required to file an updated report to notify FinCEN of the death of a beneficial owner. However, when the estate of a deceased beneficial owner is settled either through the operation of the intestacy laws of a jurisdiction within the United States or a testamentary deposition, the reporting company is required to file an updated report removing the deceased former beneficial owner and, to the extent appropriate, identifying any new beneficial owners. Moreover, the other provisions of proposed 31 CFR 1010.380(b)(1) and (d) would still apply—namely, that the reporting company would be required to report any beneficial owner who meets the substantial control or ownership components of the proposed rule as a result of another beneficial owner's death. This proposed rule is intended promote efficiency and limit the burden on reporting companies by reducing the number of updates that a reporting company must file in the event of the death of a beneficial owner.

As noted above, FinCEN is still developing reporting protocols and relevant forms, and is not proposing a final format or mechanism of reporting at this time. FinCEN will prescribe the forms and instructions for filing the required reports, consistent with the final rules. Reporting companies will not have to submit their own letters to report information to FinCEN.

[154] *See* 31 U.S.C. 5336(b)(1)(E).

F. Reporting Violations

The provision at 31 U.S.C. 5336(h)(1) makes it unlawful for any person to ''willfully provide, or attempt to provide, false or fraudulent beneficial ownership information . . . to FinCEN'' or to ''willfully fail to report complete or updated beneficial ownership information to FinCEN.'' The CTA further provides for civil and criminal penalties for any person violating that obligation.[155] Such person shall be liable for a civil penalty of up to $500 for each day a violation continues or has not been remedied, and may be fined up to $10,000 and imprisoned for up to two years, or both, for a criminal violation.[156]

Proposed 31 CFR 1010.380(g) adopts the language of 31 U.S.C. 5336(h)(1) and clarifies four potential ambiguities. First, the proposed regulations clarify that the term ''person'' includes any individual, reporting company, or other entity. Second, the proposed regulations clarify that the term ''beneficial ownership information'' includes any information provided to FinCEN under this section. Third, the proposed regulations clarify that a person ''provides or attempts to provide beneficial ownership information to FinCEN,'' within the meaning of section 5336(h)(1), if such person does so directly or indirectly, including by providing such information to another person for purposes of a report or application under section. While only reporting companies are directly required to file reports or applications with FinCEN, individual beneficial owners and company applicants may provide information about themselves to reporting companies in order for the reporting companies to comply with their obligations under the CTA. The accuracy of the database may therefore depend on the accuracy of the information supplied by individuals as well as reporting companies, making it essential that such individuals be liable if they willfully provide false or fraudulent information to be filed with FinCEN by a reporting company.

Finally, the proposed regulations clarify that a person ''fails to report'' complete or updated beneficial ownership information to FinCEN, within the meaning of section 5336(h)(1), if such person directs or controls another person with respect to any such failure to report, or is in substantial control of a reporting company when it fails to report. While the CTA requires reporting companies to file reports and prohibits failures to report, it does not appear to specify who may be liable if required information is not reported. Because section 5336(h)(1) makes it unlawful for ''*any* person'' to fail to report, and not just a reporting company, this obligation may be interpreted as applying to responsible individuals in addition to the companies themselves. To the extent an individual willfully directs a company not to report or willfully fails to report while in substantial control of a reporting company, potential penalties against such individuals may be necessary to ensure that companies comply with their obligations. This is essential to achieving the CTA's primary objective of preventing malign actors from using legal entities to conceal their ownership and activities. Malign actors who form entities and fail to report required beneficial ownership information may not be deterred by penalties applicable only to such entities. Absent individual liability, malign actors might seek to create new entities to replace old ones whenever an entity is subject to liability, or might otherwise attempt to use the corporate form to insulate themselves from the consequences of their willful conduct.

One commenter suggested exploring the idea of the termination of entities that willfully refuse to file. However, the commenter did not identify what authority under the CTA would permit FinCEN to take such action. FinCEN also notes that several commenters expressed a desire for FinCEN to take a conservative approach to enforcement of the statute, at least initially, for instance by being clear that FinCEN will not impose fines except in the case of other illegal activity or that FinCEN will take a very flexible compliance approach during the early stages of implementation. FinCEN will consider these comments in the exercise of its enforcement discretion and welcomes additional comments on this subject.

G. Definitions

As previously noted, many of the terms for this proposed rule are defined in 31 U.S.C. 5336. With the exceptions of the definitions discussed separately above and below, FinCEN has followed those meanings as set out by Congress, with some minor clarifications.

Under proposed 31 CFR 1010.380(f)(1), the term ''employee'' would have the meaning given it in 26 CFR 54.4980H–1(a)(15). The CTA does not expressly define the term ''employee,'' but the proposed definition is established and familiar given its use in the Affordable Care Act.[157] Using the definition here promotes regulatory consistency.

Proposed 31 CFR 1010.380(f)(2) would retain the statutory definition and define ''FinCEN identifier'' as the unique identifying number assigned by FinCEN to a legal entity or individual under this section.

Proposed 31 CFR 1010.380(f)(3) would define ''foreign person'' as a person who is not a United States person.

Proposed 31 CFR 1010.380(f)(4) would define ''Indian Tribe'' as any Indian or Alaska Native Tribe, band, nation, pueblo, village, or community that the Secretary of the Interior acknowledges to exist as an Indian Tribe as set forth in section 102 of the Federally Recognized Indian Tribe List Act of 1994 (25 U.S.C. 5130).

Under proposed 31 CFR 1010.380(f)(5), an individual is lawfully admitted for permanent residence if such individual has been lawfully accorded the privilege of residing permanently in the United States as an immigrant in accordance with the immigration laws and such status not having changed as set forth in section 101(a) of the Immigration and Nationality Act (8 U.S.C. 1101(a)).

Proposed 31 CFR 1010.380(f)(6) would define ''operating presence at a physical office within the United States'' to mean that an entity regularly conducts its business at a physical location in the United States that the entity owns or leases, that is not the place of residence of any individual, and that is physically distinct from the place of business of any other unaffiliated entity.

Proposed 31 CFR 1010.380(f)(7) would define a ''pooled investment vehicle'' as: (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 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* is identified by its legal name by the applicable investment adviser in the Form ADV (or successor form) filed with the U.S. Securities and Exchange Commission.

Proposed 31 CFR 1010.380(f)(8) would define ''senior officer'' to mean any individual holding the position or exercising the authority of a president, secretary, treasurer, chief financial officer, general counsel, chief executive officer, chief operating officer, or any

[155] 31 U.S.C. 5336(h)(3)(A).

[156] *Id.*

[157] *See* 26 U.S.C. 4980H.

other officer, regardless of official title, who performs a similar function.

As noted previously, proposed 31 CFR 1010.380(f)(9) would define ''state'' as 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.

Proposed 31 CFR 1010.380(f)(10) would define the term ''United States person'' as having the meaning given the term in section 7701(a) of the Internal Revenue Code of 1986.

H. Effective Date

The CTA authorizes FinCEN to determine the effective date of the BOI reporting rule. FinCEN does not propose an effective date in this proposed regulation, but seeks views on the timing of the effective date and any potential factors to be considered. FinCEN is committed to identifying the soonest possible effective date after publication of the final rule. FinCEN recognizes that the collection of beneficial ownership information is critical to protecting U.S. national security and other interests and will advance efforts to counter money laundering, terrorist financing, and other illicit activity. It will also bring the United States into compliance with international AML/CFT standards and support U.S. leadership in combatting corruption and other illicit finance. A timely effective date will help to achieve national security and law enforcement objectives and support Congress' goals in enacting the CTA.

FinCEN also notes that certain practical steps must be completed prior to the effective date and the initiation of the collection of information, and it is undertaking significant work towards achieving a timely effective date. These steps include the design and build of a new IT system—the Beneficial Ownership Secure System, or BOSS—to collect and provide access to BOI. Upon the CTA's enactment, FinCEN began a process for BOSS program initiation and acquisition planning that will lead to the development of a detailed planning and implementation document. Once greater progress is made towards the final reporting rule and a parallel rulemaking effort relating to access to and disclosure of BOI, which will provide concrete guidance on the design and build of the BOSS, FinCEN will move expeditiously to the execution phase of the project, which will include several technology projects that will be executed in parallel.

The effective date for the final reporting rule will also turn on several additional factors, such as: (1) How long reporting companies, and small businesses in particular, need to comply with the new rules; (2) the time needed for secretaries of state and Tribal authorities to understand the new requirements and to update their websites and other documentation to notify reporting companies of their obligations under the CTA; and (3) the anticipated timeline for revising the CDD Rule, which is triggered by the effective date of the final reporting rule. Secretaries of state anticipate that they will need to field a high volume of questions and devote significant resources to addressing reporting companies' concerns, even with a delayed effective date that provides sufficient time to educate reporting companies about their responsibilities, distribute guidance, and ensure that reporting mechanisms are fully functional and user-friendly. Absent a coordinated effort with state- and Tribe-level authorities, a reporting requirement could create confusion and unintended liability for businesses. FinCEN intends to conduct ongoing outreach with stakeholders, including secretaries of state and Indian Tribes, trade groups, and others, to ensure coordinated efforts to provide notice and sufficient guidance to all potential reporting companies. However, FinCEN welcomes comments on how long other stakeholders such as secretaries of state and local authorities will need to provide notice of and guidance on the BOI reporting requirements to reporting companies.

V. Request for Comment

FinCEN continues in this NPRM to seek comment on how best to implement the reporting requirements of the CTA, and responsive comments can now focus on the proposed reporting rule that FinCEN has developed. FinCEN seeks comment from all parts of the public and Federal Government, with respect to the proposed rule as a whole and specific provisions discussed above.

FinCEN invites comment on any and all aspects of the proposed rule, and specifically seeks comments on the following questions:

Understanding the Rule

1. How can the organization of the rule text be improved to make it easier to understand and implement?

2. How can the language of the rule text be simplified or streamlined to make it easier to understand and implement?

Reporting Requirement

3. In general, is the description of the information FinCEN is proposing to require reporting companies to report about a beneficial owner and company applicant sufficiently clear? If not, what additional clarification should FinCEN provide? Are there other categories of information FinCEN should collect about beneficial owners and company applicants, taking into consideration the statutory language of the CTA? Is there additional information that would be useful for FinCEN to collect, but which would require further authorization by Congress?

4. Is it clear what the requirement to report a beneficial owner's residential address ''for tax residency purposes'' means? If not, how could the regulatory language be clarified? Are there cases where a respondent could have difficulty providing tax residency information, or where other residence information would be more generally valuable than tax residency information?

5. In general, is the description of the information FinCEN is proposing to require reporting companies to report about themselves sufficiently clear? If not, what additional clarification should FinCEN provide? Is there additional information about a reporting company that FinCEN should collect to ensure that it can identify and distinguish between different reporting companies, and to allow for effective searching of the beneficial ownership database?

6. What value can FinCEN reasonably expect from its proposed voluntary mechanism for collecting TINs of beneficial owners and company applicants? How can such information enhance the overall value of the information collected under this reporting requirement? Are there potentially negative consequences to a voluntary collection of this data? For instance, do businesses have particular concerns about providing or not providing such information?

7. Does FinCEN have the authority under the CTA to require that a person filing a report or application with FinCEN pursuant to proposed 31 CFR 1010.380(b) certify that the report is accurate and complete?

8. In general, is the term ''business street address'' sufficiently clear on its face, or does it require further clarification to avoid the reporting of P.O. boxes or the addresses of formation agents, agents for the service of process, and other third parties as a reporting company's ''business street address''? Would it improve the clarity of the reporting requirement to substitute the

term ''street address of the reporting company's principal place of business''?

9. Should the reporting requirement for foreign reporting companies be more specific with respect to the reporting of a business address? If so, should it specify provision of a U.S. business street address if possible, a principal place of business (even if outside the United States), or some other alternative?

10. Is the process by which FinCEN is providing notice to the public about the specific reporting requirements of this regulation sufficiently clear and deliberate to give interested parties adequate notice, opportunity to comment, and opportunity to prepare to comply with the requirements?

FinCEN Identifier

11. Are the proposed requirements for obtaining a FinCEN identifier from FinCEN and using a FinCEN identifier sufficiently clear?

12. If an individual beneficial owner has obtained a FinCEN identifier and provided its FinCEN identifier to a reporting company, should a reporting company be required, rather than merely permitted, to use the FinCEN identifier in lieu of the four pieces of identification information (*i.e.,* name, date of birth, street address, and unique identification number) the reporting company must report to FinCEN for the individual beneficial owner, as is proposed in the rule?

Special Reporting Rules

13. Proposed 31 CFR 1010.380(b)(3) sets out special reporting rules. Two of these are mandated by the CTA—the use of the FinCEN identifier, and the special rule for foreign pooled investment vehicles. FinCEN created the third and fourth—the special rule for minor children and deceased company applicants—to clarify the core reporting requirements and ensure that they are workable considering the unanticipated consequences of certain statutory language. Are any other special reporting rules necessary to make the core reporting requirements, or the rule as a whole, work better? Please explain the necessity and propose regulatory language. In doing so, FinCEN encourages commenters to explain how their proposals are consistent with the text of the CTA.

14. As noted in the previous question, proposed 31 CFR 1010.380(b)(3)(iv) contains a special reporting rule applicable to situations in which the company applicant for a reporting company is deceased. Is it sufficient for FinCEN to permit a reporting company to report that fact, together with any information that the reporting company actually knows about its company applicant, or should FinCEN require other information?

Beneficial Owners

15. Proposed 31 CFR 1010.380(d) interprets the CTA as providing for a relatively broad approach to the definition of beneficial ownership. How burdensome will this approach be for reporting companies? How useful will it be for national security, intelligence, and law enforcement activities? In addition to responding generally to this question, please provide specific considerations and data related to costs and burdens.

16. One component of the proposed definition of beneficial owner is an individual who ''exercises substantial control over the reporting company.'' Is the definition of ''substantial control'' sufficiently clear for reporting companies to be able to understand and use it? In addition to responding generally to this question, please consider the following specific questions:

i. Are there any indicators that are not sufficiently clear? What additional clarification could make it easier to consider these indicators when determining whether an individual exercises substantial control? Please propose regulatory language.

ii. Does the catch-all provision (''any other form of substantial control over the reporting company'') enable a reporting company to identify the individual(s) in substantial control of the reporting company? What would the impact on be on the usefulness, accuracy, or completeness of information in the database if the definition of ''substantial control'' lacked such a catch-all provision?

iii. Are there any additional indicators of substantial control that FinCEN should consider expressly including in the regulatory definition?

17. The statutory definition of beneficial owner also includes an individual ''owns or controls at least 25 percent of the ownership interests.'' Is the approach to first define ''ownership interests'' useful? In addition to responding generally to this question, please consider the following specific questions:

i. Is the proposed definition of ''ownership interests'' sufficiently clear for reporting companies to be able to understand and use it? What additional clarification could make it more useful? Please propose explanatory regulatory language.

ii. Are there any aspects of the proposed rule on the determination of whether an individual owns or controls 25 percent of the ownership interests of a reporting company that are not sufficiently clear? What additional clarification could make it easier to calculate whether one owns or controls 25 percent of the ownership interests? Please propose explanatory regulatory language.

18. Are there any aspects of the exceptions that are not sufficiently clear? What additional clarification could make it easier to determine whether an individual is excluded from the definition of beneficial owner?

19. FinCEN expects that the definition of beneficial owner is broad enough that every reporting company will have at least one beneficial owner to report. Is that expectation reasonable, and if not, what mechanism should FinCEN establish or what changes should FinCEN make to the proposed rule to make certain that every reporting company reports at least one beneficial owner?

Company Applicant

20. Is the proposed definition of company applicant sufficiently clear in light of current law and current company filing and registration practices, or should FinCEN expand on this definition? If so how?

Reporting Company

21. Is the proposed definition of ''reporting company'' sufficiently clearly to avoid confusion about whether an entity does or does not meet this requirement? If not, what additional clarifications could make it easier to determine whether this requirement applies to a particular entity?

22. FinCEN's proposed definitions of domestic and foreign reporting company reference ''the secretary of state or a similar office'' that is involved in filings that create entities or register entities, respectively. Does this distinction result in different ''similar offices'' being applicable for domestic and foreign reporting companies?

23. The proposed rule defines ''reporting company'' to include all domestic corporations and limited liability companies based on FinCEN's understanding that all corporations and limited liability companies are created by the filing of a document with a secretary of state or a similar office under the law of a state or Indian Tribe. Are there any states or Indian Tribes where corporations or limited liability companies are not created by a filing of a document with a secretary of state or a similar office?

24. In general, FinCEN believes the phrase ''other similar entity created by

the filing of a document with a secretary of state or similar office'' in the context of the definition of ''domestic reporting company'' would likely include limited liability partnerships, limited liability limited partnerships, business trusts (a/k/a statutory trusts or Massachusetts trusts), and most limited partnerships, because such entities appear typically to be created by a filing with a secretary of state or similar office. However, FinCEN understands that state and Tribal laws may differ on whether certain other types of legal or business forms—such as general partnerships, other types of trusts, and sole proprietorships—are created by a filing. Are there any states or Indian Tribes where general partnerships, other types of trusts, or sole proprietorships are created by the filing of a document with a secretary of state or similar office?

25. FinCEN's proposed definition of foreign reporting company requires that the foreign entity is ''registered to do business'' in any state or Tribal jurisdiction. FinCEN understands that this threshold may be interpreted differently across U.S. jurisdictions. What activities would require foreign (non-U.S.) companies to register in a U.S. jurisdiction before they may conduct business in that jurisdiction, and what discrepancies exist in these standards across the jurisdictions?

26. In general, are the proposed exemptions from the definition of ''reporting company'' sufficiently clear, or are there aspects of any of the defined exemptions that FinCEN should clarify, similar to the exposition of the inactive business exemption? If so, how?

27. Is the term ''full-time employee'' explained sufficiently clearly in the large operating company exemption?

28. Is the term ''operating presence at a physical office within the United States,'' which is used in the large company exemption and other exemptions, defined sufficiently clearly? Is it appropriate that the term is defined to exclude a physical location that is also an individual's residence? If not, why not? Should the term include any other limitations or exclusions?

29. Are there any exemptions from the definition of ''reporting company'' that should be defined more broadly or more narrowly? If so, which ones, why, and how?

30. In addition to the proposed exemptions from the definition of ''reporting company,'' are there any other categories of entities that are not currently subject to an exemption from the definition of ''reporting company'' that FinCEN should consider for exemption and, if so, why?

Other Definitions

31. While Congress defined many of the CTA's key terms within the statute, some—like ''public utility''—were left to FinCEN to interpret. If any of FinCEN's proposed definitions for these currently undefined terms warrant revision, which ones, why, and how?

32. Are there any undefined terms in the proposed rule for which FinCEN did not provide definitions, but should? If so, which terms, why should FinCEN define them, and how?

Timing of Reports and Updates

33. FinCEN believes the proposed timeframes for reporting, correcting, and updating information to be reported to FinCEN are within FinCEN's legal authority to propose, and are appropriate to ensure that the BOI collected is current, useful, and accurate without making the reporting requirement unduly burdensome. Is there any respect in which these timeframes should be altered because alteration is necessary to conform with the CTA or other law? Should any timeframes be altered because gains in ensuring information is current and accurate outweighs the burden imposed? Should any timeframes be altered because the burden imposed outweighs the gains in ensuring information is current and accurate?

i. In particular, does the proposed timeline of one year for existing reporting companies to file an initial report impose undue burdens on reporting companies, secretaries of state, or other stakeholders? Is a longer timeline necessary? If so, why?

ii. By contrast, is a shorter timeline necessary? If so, why?

34. FinCEN has proposed that a reporting company that ceases to be entitled to an exemption from the definition of reporting company (under one or more of proposed exemptions in 31 CFR 1010.380(c)(2)(i) through (xxiii)), report to FinCEN within 30 days after it no longer meets those criteria. Is it appropriate that all reporting company exemptions be handled in the same way? If not, explain how and why different exemptions should be handled differently.

35. The proposed rule would require that a reporting company submit a corrected report to FinCEN not later than 14 days after the date that the reporting company knows or has reason to know that any information in a report submitted to FinCEN under this section was not correct when filed and remains incorrect. The rule also explains how the statutory safe harbor of the CTA for incorrect information will be applied. Are these proposed provisions an appropriate implementation of the requirements of the CTA? If not, why not?

36. Should FinCEN require reporting companies that have terminated their legal existence report this to FinCEN? If terminated entities are not required to report their termination, how should FinCEN be made aware of their termination, to properly administer its record retention obligations?

37. The proposed rule would require a reporting company that subsequently meets the criteria for any exemption under 31 CFR 1010.380(c)(2)(i) through (xxiii) after the filing of an initial report to file an updated report within 30 days. Is 30 days sufficient to enable such legal entities to file such reports? Is it too long?

38. Is the burden that a 30-day update requirement would impose on reporting companies justified by the degree to which the accuracy and usefulness of the database depend upon prompt updates? Are there other factors that FinCEN should consider in reviewing update timelines in consultation with the Departments of Justice and Homeland Security, as mandated by the CTA?

Reporting Violations

39. Is FinCEN's articulation of what constitutes a reporting violation under the CTA sufficiently clear?

Effective Date of the Rule

40. How much time is needed before the rule is effective to enable jurisdictions within the United States, reporting companies, and other stakeholders to incorporate any necessary changes into their systems and other procedures in tandem with other routine updates, and thereby enable reporting companies to reduce implementing costs? Should FinCEN consider a long effective date, and if so, why? Should FinCEN consider a shorter effective date, and if so, why?

Please note that questions for comment specific to the Regulatory Analysis section that follows may be found at the end of that section.

VI. Regulatory Analysis

FinCEN has analyzed the proposed rule as required under Executive Orders 12866 and 13563, the Regulatory Flexibility Act, the Unfunded Mandates Reform Act, and the Paperwork Reduction Act. FinCEN's analysis assumed the baseline scenario is the current regulatory framework, which has no beneficial ownership disclosure requirements to FinCEN. Thus, any estimated costs and benefits as a result

of the proposal are new relative to maintaining the current framework. Pursuant to the Regulatory Flexibility Act, FinCEN's analysis concluded that the proposed rule would have a significant economic impact on a substantial number of small entities. Furthermore, pursuant to the Unfunded Mandates Reform Act, FinCEN concluded that the proposed rule, if implemented, would result in an expenditure of $158 million or more annually by state, local, and Tribal governments or by the private sector.[158]

A. Executive Orders 12866 and 13563

Executive Orders 12866 and 13563 direct agencies to assess costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, and public health and safety effects; distributive impacts; and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. This proposed rule has been designated a ''significant regulatory action'' and economically significant under section 3(f) of Executive Order 12866. Accordingly, the proposed rule has been reviewed by the Office of Management and Budget (OMB).

This proposed rule is necessary to comply with and implement the CTA. As described in the preamble, this proposed rule is consistent with the CTA's statutory mandate that the Secretary of the Treasury by regulation prescribe procedures and standards governing reports and the FinCEN identifier described in the CTA. The CTA states that the regulations shall be promulgated to the extent practicable: (1) To minimize burdens on reporting companies associated with the collection of BOI, including by eliminating duplicative requirements; and (2) to ensure that the BOI reported to FinCEN is accurate, complete, and highly useful. As also described throughout the preamble, FinCEN has carefully weighed these considerations while developing the proposed rule. The implementation of the CTA would promote the President's objective to combat illicit activity in the United States, including money laundering related to the financing of terrorism, corruption, proliferation, and other crimes.[159] The proposed rule avoids undue interference with state, local, and Tribal governments. While such governments are important partners and consultative parties in the implementation of the CTA, as noted in the law itself, the proposed rule minimizes the interference with these governments (see alternative considered below).

i. Costs

The primary cost to the public associated with the proposed rule results from multiple information collection requirements. Pursuant to the proposed rule, reporting companies would be required to submit to FinCEN an initial report that contains certain identifying information for the reporting company, each identified beneficial owner, and each company applicant, as well as copies of acceptable identification documents for each identified beneficial owner and each company applicant. Reporting companies would also be required to update these reports. Individuals requesting a FinCEN identifier would be required to submit initial requests to FinCEN and update the identifying information associated with their FinCEN identifier.[160] Finally, foreign pooled investment vehicles would be required to submit reports to FinCEN identifying a beneficial owner and update such information. A detailed analysis of the potential costs associated with these proposed information collection requirements is included in the Paperwork Reduction Act section below (see Tables 6 and 7 below). The net present value of the total cost over a 10-year time horizon at a seven percent discount rate for these information collections is approximately $3.4 billion. At a three percent discount rate, the net present value is approximately $3.98 billion as the aggregate cost estimate of the proposed rule. FinCEN estimates that it would cost each of the 25 million domestic and foreign reporting companies that are estimated to currently exist approximately $45 apiece to prepare and submit an initial report in the first year that the BOI reporting requirements are in effect. In comparison, the state formation fee for creating a limited liability company could cost between $40 and $500, depending on the state.[161]

Administering the regulation would also entail potential costs to FinCEN. Such costs include information technology (IT) development and ongoing annual maintenance, as well as processing electronic submissions of BOI data.[162] FinCEN estimates that initial IT development costs would be $33 million[163] with an additional $31 million per year required to maintain the new BOI systems and the underlying FinCEN technology being leveraged to support the new capabilities.

FinCEN may incur additional costs, besides those estimated above, while promoting compliance with the BOI reporting requirements, potentially including providing training on the requirements, publishing documents such as guidance and frequently asked questions (FAQs), and conducting outreach to and answering inquiries from the public. FinCEN does not currently have specific estimates for these costs, but estimates that there would be relatively modest personnel costs of less than $10 million associated with the reporting rule in both Fiscal Year 2022 and Fiscal Year 2023, with continuing recurring costs of roughly the same magnitude for ongoing outreach and enforcement thereafter.

FinCEN and other government agencies may also incur costs in enforcing compliance with the regulation. FinCEN does not currently

[158] The Unfunded Mandates Reform Act requires an assessment of mandates with an annual expenditures of $100 million or more, adjusted for inflation. The gross domestic product (GDP) deflator in 1995, the date of the Unfunded Mandates Reform Act, is $71.868, while in 2020 it was $113.625. Thus, the inflation adjusted estimate for $100 million is $113.625/71.868 × 100 = $158 million.

[159] Fighting corruption was identified as a Presidential priority in a Presidential Memorandum published on June 3, 2021. The memorandum specifically mentions bringing transparency to the United States and global financial systems. The White House, *Memorandum on Establishing the Fight Against Corruption as a Core United States National Security Interest,* (June 3, 2021), available at *https://www.whitehouse.gov/briefing-room/presidential-actions/2021/06/03/memorandum-on-establishing-the-fight-against-corruption-as-a-core-united-states-national-security-interest/.*

[160] FinCEN is not separately calculating a cost estimate for entities requesting a FinCEN identifier, but rather FinCEN has included those costs as a part of the costs of submitting the BOI reports.

[161] The fee for Articles of Organization of a domestic limited liability company in Kentucky is $40. Kentucky Secretary of State, *Business Filings Fees,* available at *https://sos.ky.gov/bus/business-filings/Pages/Fees.aspx* The fee for a Certificate of Registration for a limited liability company in Massachusetts is $500. Massachusetts Secretary of State, *Corporations Division Filing Fees,* available at *https://www.sec.state.ma.us/cor/corfees.htm.* FinCEN also identified a website that provides the fees for all states, as a point of reference. *See* IncFile, *Review State Filing Fees & LLC Costs,* available at *https://www.incfile.com/state-filing-fees.*

[162] FinCEN would also incur costs in administering access to BOI, but those costs will be considered in detail in a separate notice for the BOI access regulations.

[163] FinCEN's cost estimates will continue to evolve as more information about systems requirements and development costs become known. For example, the requirement to include scanned images of acceptable identification documents will increase the cost of system development and implementation.

have estimates for these costs, and they are not included in the estimates above. FinCEN plans to identify non-compliance with BOI reporting requirements [164] by leveraging a variety of data sources, both internal and external. Because the external data sources may include third parties, FinCEN requests comment on what external data sources would be appropriate for FinCEN to leverage in identifying non-compliance with the BOI reporting requirements and what potential costs may be incurred by such third parties, particularly state, local, and Tribal authorities and financial institutions. If the external data sources include third party commercial data, FinCEN assesses that the cost associated with accessing these databases would be modest and incremental, given that FinCEN regularly maintains access to such databases but may need to request additional licenses for employees. After identifying non-compliance, FinCEN may initiate outreach to the entity, work with law enforcement to investigate non-compliance, or initiate an enforcement action. FinCEN's enforcement of the BOI reporting requirements would also involve coordination with law enforcement agencies. These law enforcement agencies may also incur costs (time and resources) while conducting investigations into non-compliance. FinCEN anticipates that costs to law enforcement agencies that have access to the BOI data would be assessed in the BOI access regulations, and therefore is not estimating them here.

The proposed rule does not impose direct costs on state, local, and Tribal governments. However, state, local, and Tribal governments would incur indirect costs in connection with the implementation of the proposed rule. For example, such governments would likely be the initial point of outreach for some companies with questions on how to comply with the reporting requirement. FinCEN anticipates taking measures to minimize the costs associated with such questions. These measures would include providing clear FinCEN guidance directly to the public on BOI reporting requirements, which may help to diminish the number of questions from the public. FinCEN would also provide guidance materials to state, local, and Tribal governments that they could use and distribute in response to questions, which would minimize those governments' need to develop their own guidance materials at their own cost. FinCEN received comments to the ANPRM which discussed such possible costs; they are summarized in the Unfunded Mandates Reform Act section below. FinCEN encourages additional comments that discuss, and if possible estimate, the costs to state, local and Tribal governments under the proposed rule.

ii. Benefits

There are several potential benefits associated with this proposed rule. These benefits are interrelated and likely include improved and more efficient investigations by law enforcement, U.S. financial institutions, and other authorized users, which in turn may strengthen national security, enhance financial system transparency and integrity, and align with international financial standards.

The U.S. 2018 National Money Laundering Risk Assessment (NMLRA) estimates that domestic financial crime, excluding tax evasion, generates approximately $300 billion of proceeds for potential laundering.[165] Criminal actors may use entities to send or receive funds, or otherwise assist in the money laundering process to legitimize the illegal funds. For example, an entity may act as a shell company—which usually has no employees or operations—and hold assets to obscure the identity of the true owner, or act as a front company which generates legitimate business proceeds to commingle with illicit earnings. Trade-based money laundering, for example, often leverages such front companies.[166] FinCEN is not able to provide estimates of the amount of proceeds that flow through money laundering schemes that use entities given lack of data,[167] but entities are frequently used in money laundering schemes and provide a layer of anonymity to the natural persons involved in such transactions.[168]

Identifying the owners of these entities is a crucial step to all parties that investigate money laundering. The NMLRA notes that, according to federal law enforcement agencies, misuse of entities poses a significant money laundering risk, and that law enforcement efforts to uncover the true owners of companies can be resource-intensive, especially when those ownership trails lead overseas or involve numerous layers of ownership.[169] However, there is currently no systematic way to obtain information on the beneficial owners of entities in the United States.

The proposed rule is expected to help address the lack of BOI critical for money laundering investigations. Improved visibility into the identities of the individuals who own or control entities may enhance law enforcement's ability to investigate, prosecute, and disrupt the financing of international terrorism, other transnational security threats, and other types of domestic and transnational financial crime, when entities are used to engage in such activities. Other authorized users in the national security and intelligence fields would likewise be expected to benefit from the use of this data. The BOI database may also increase investigative efficiency and thus decrease the cost to law enforcement of investigations that require or benefit from identifying the owners of entities. These anticipated benefits are supported by ANPRM comments from those that represent the law enforcement community, some of whom expressed the opinion that the availability of BOI would provide law enforcement at every level with an important tool to investigate the misuse of shell companies and other entities used for criminal activity. To the extent these investigations may become more effective, money laundering in the United States may become more

[164] This would include identifying potential non-compliance with the proposed rule through reporting of false information or through failing to file an initial or updated report when required.

[165] U.S. Department of the Treasury, *National Money Laundering Risk Assessment* (2018), p. 2, available at *https://home.treasury.gov/system/files/136/2018NMLRA_12-18.pdf#:~:text=The%202018%20National%20Money%20Laundering%20Risk%20Assessment%282018%20NMLRA%29,participated%20in%20the%20development%20of%20the%20risk%20assessment.*

[166] *Id.,* p. 29. Trade-based money laundering involves a cycle of money brokers and exporters of goods to disguise and move illicit funds. The sale of the goods effectively launders the money and provides payment to illicit actors in local currency. Merchants who receive payment for their goods may be unaware they are participating in a money laundering scheme, but some willingly accept such funds and are complicit. *Id.,* p. 3.

[167] For example, the Government Accountability Office's 2020 report on trade-based money laundering noted that specific estimates of the amount of such activity globally are unavailable, but it is likely one of the largest forms of money laundering. Government Accountability Office, *Trade-based Money Laundering* (April 2020), p. 19, available at *https://www.gao.gov/assets/gao-20-333.pdf.*

[168] Please see the discussion of this topic in the Background section of the preamble, which describes in greater detail the money laundering concerns with legal entities and disguised beneficial owners, as well as the Department of the Treasury's efforts to address the lack of transparency in legal entity ownership structures.

[169] U.S. Department of the Treasury, *National Money Laundering Risk Assessment* (2018), p. 4, available at *https://home.treasury.gov/system/files/136/2018NMLRA_12-18.pdf#:~:text=The%202018%20National%20Money%20Laundering%20Risk%20Assessment%282018%20NMLRA%29,participated%20in%20the%20development%20of%20the%20risk%20assessment.*

difficult. Making any method of money laundering more difficult in the U.S. would improve the national security of the United States by increasing barriers for illicit actors to covertly enter and act within the U.S. financial system.[170] This may serve to deter the use of U.S. entities for money laundering purposes.

Second, since the collection of BOI would shed light upon the beneficial owners of U.S. entities, which may also provide insight into overall ownership structures, the proposed rule may promote a more transparent, and consequently more secure, economy. Financial institutions with authorized access to such data would have key data points—including potentially additional beneficial owners, given the differences between the definition in the proposed rule and the CDD Rule—available for their customer due diligence processes, which may decrease customer due diligence and other compliance burdens.[171] FinCEN also expects increased transparency in ownership structures of entities to increase financial system integrity by reducing the ability of certain actors to hide monies through shell companies and other entities with obscured ownership information. This may discourage inefficient capital allocation designed primarily for non-business reasons, such as paying for professional services to set up and potentially capitalizing intermediate legal entities designed solely to obscure the relationship between a legal entity and its owners. In addition, the IRS could obtain access to BOI for tax administration purposes, which may provide benefits for tax compliance.

Third, the BOI reporting requirements would have the benefit of aligning the United States with international AML/CFT standards, which would bolster support for such standards and strengthen cooperation with our partners, including the sharing of BOI, subject to appropriate protocols consistent with the CTA, in transnational investigations, tax enforcement, and the identification of national and international security threats.

The benefits of the proposed rule are difficult to quantify, but the prior description of these benefits point to their significance. FinCEN's CDD Rule also did not quantify the benefits of collecting BOI, but rather included a breakeven analysis that concluded the CDD Rule would only have to reduce annual real illicit activity by between 0.16 percent (roughly $0.38 billion in 2016, rising to 0.47 billion in 2025) and 0.6 percent (roughly $1.46 billion in 2016, rising to $1.81 billion in 2025) to yield a positive net benefit.[172] While the CDD Rule and proposed BOI rule require submission of BOI under different circumstances and to different parties, the breakeven analysis of the CDD Rule suggests that even a small percentage reduction in money laundering activities as a result of the proposed BOI rule could result in economically significant net benefits. FinCEN does not currently propose a breakeven analysis for the proposed BOI rule herein, as it continues to collect information on potential costs and benefits of the proposed rule through the rulemaking process. FinCEN requests comment on data or methods that may inform estimates of potential benefits in this case.

iii. Alternatives

The proposed rule is statutorily mandated, and therefore FinCEN has very limited ability to implement alternatives. However, FinCEN considered certain significant alternatives that would be available under the statute.

One alternative would be to require reporting companies to submit BOI to FinCEN indirectly, by submitting the information to their jurisdictional authority who would then transmit it to FinCEN. In this case, jurisdictions would need to develop IT that would ultimately transmit data to FinCEN.[173] As a lower bound estimate, if FinCEN assumes that jurisdictions would only incur 10 percent of FinCEN's stated initial IT development costs of approximately $33 million, then each jurisdiction would incur approximately $3.3 million in development costs. As an upper bound estimate, if FinCEN assumes that jurisdictions would incur close to 100 percent of the stated costs, then each of the jurisdictions could incur as much as approximately $33 million for IT development, plus additional ongoing data maintenance costs. At either end of the range, this scenario would impose significant costs on state or local governments.

FinCEN requested comment in the ANPRM on questions regarding the collection of BOI through partnership with state, local, and Tribal governments. In response to the ANPRM, several state authorities commented that they should not be involved in the process of collecting and transmitting BOI to FinCEN. Some states noted that they did not gather or index ownership information, and that states might need to change their statutes, and possibly engage in additional rulemaking to establish a system for collecting BOI and sharing such information with FinCEN. One state noted that the CTA requires FinCEN, not individual states, to collect, store, and protect the information collected, and that there is no obligation in the CTA that a state adopt new legislation in order to aid in the delivery of BOI. Another state that currently collects some ownership information (office, director, and member information for most business entities) stated that reporting this information to FinCEN would ''end up causing more problems than it solves'' because the owner information reported to the state, such as a ''member'' of an LLC, may not be the same individual that would be reported to FinCEN as a beneficial owner under the CTA's requirements. Other states noted technical challenges with providing BOI to FinCEN, such as limitations in sharing images due to file sizes, which would require changes to states' filing systems. One state noted that these types of changes could easily cost a million dollars or more. For all of these reasons, FinCEN decided not to propose an alternative in which reporting companies would submit BOI to their jurisdictional authority. However, FinCEN continues to consider whether there are feasible opportunities to partner with state authorities on the BOI reporting requirement, particularly where states already collect BOI, and FinCEN welcomes comments on this subject.[174]

[170] The CTA states that FinCEN may disclose BOI upon receipt of a request from a federal agency on behalf of a law enforcement agency, prosecutor, or judge of another country, including a foreign central authority or competent authority (or like designation), under prescribed conditions. 31 U.S.C. 5336(c)(2)(B)(ii). Therefore, the sharing of BOI with international partners may also result in more efficient investigations of money laundering on a global scale, and also help U.S. law enforcement understand global money laundering networks that affect the United States.

[171] It is worth noting that the CDD Rule also promotes transparency in ownership structures of legal entities, and thereby strengthens the U.S. economy and national security. However, the CTA's BOI reporting requirement may improve upon these benefits by requiring that BOI be collected earlier in the life cycle of a company, at the time of company formation, rather than when the company opens a bank account. The CTA would also apply to a broader range of entities, since the CDD Rule covers only those institutions subject to financial institution customer due diligence requirements (*e.g.,* those with accounts at such institutions).

[172] 81 FR 29432.

[173] FinCEN further assumes under this alternative analysis that FinCEN would be responsible for aggregating this BOI, consistent with the CTA.

[174] One jurisdiction recommended that FinCEN receive copies of registry databases on a fixed schedule in order to compare the number of FinCEN filers with the numbers from corporate registrars across the country. Another state raised numerous questions about relying on existing state

Finally, as explained in more detail below, FinCEN considered alternatives while shaping the specific reporting requirements of the rule, including: (1) The length of the initial reporting period; and (2) the length of time to file an updated report. These alternatives and their cost differences, as well as FinCEN's rationale for not selecting the alternative, is discussed in the Paperwork Reduction Act section below (see Table 8).

B. Regulatory Flexibility Act

The Regulatory Flexibility Act [175] (RFA) requires an agency either to provide an initial regulatory flexibility analysis (IRFA) with a proposed rule or certify that the proposed rule would not have a significant economic impact on a substantial number of small entities. This proposed rule would apply to a substantial number of small entities. FinCEN has attempted to minimize the burden on reporting companies to the greatest extent practicable, but the proposed rule may nevertheless have a significant economic impact on small entities required to disclose beneficial owners. Accordingly, FinCEN has prepared an IRFA. FinCEN welcomes comments on all aspects of the IRFA. A final regulatory flexibility analysis will be conducted after consideration of comments received during the comment period.

i. Statement of the Need for, and Objectives of, the Proposed Rule

The CTA establishes a new federal framework for the reporting, storage, and disclosure of BOI. In enacting the CTA, Congress has stated that this new framework is needed to set a clear federal standard for incorporation practices; protect vital U.S. national security interests; protect interstate and foreign commerce; better enable critical national security, intelligence, and law enforcement efforts to counter money laundering, the financing of terrorism, and other illicit activity; and bring the United States into compliance with international AML/CFT standards.[176] Section 6403 of the CTA amends the BSA by adding a new section at 31 U.S.C. 5336 that requires the reporting of BOI at the time of formation or registration of a reporting company, along with protections to ensure that the reported BOI is maintained securely and accessed only by authorized persons for limited uses. The CTA requires the Secretary to promulgate implementing regulations that prescribe procedures and standards governing the reporting and use of such information, to include procedures governing the issuance of FinCEN identifiers for BOI reporting. The CTA requires FinCEN to maintain BOI in a secure, non-public database that is highly useful to national security, intelligence, and law enforcement agencies, as well as federal functional regulators. The proposed rule would require certain entities to report to FinCEN information about the reporting company, its beneficial owners (the individuals who ultimately own or control the reporting companies) and the company applicant of the reporting company, as required by the CTA.

ii. Small Entities Affected by the Proposed Rule

To assess the number of small entities affected by the proposed rule, FinCEN separately considered whether any small businesses, small organizations, or small governmental jurisdictions, as defined by the RFA, would be impacted. FinCEN concludes that small businesses would be substantially impacted by the proposed rule. Each of these three categories is discussed below.

In defining ''small business'', the RFA points to the definition of ''small business concern'' from the Small Business Act.[177] This small business definition is based on size standards (either average annual receipts or number of employees) matched to industries.[178] Under the proposed rule, small businesses would be ''reporting companies'' required to submit BOI reports to FinCEN.[179] There are 23 types of entities that are exempt from submitting BOI reports to FinCEN,[180] but none of these exemptions apply directly to small businesses. In fact, many of the statutory exemptions, such as exemptions for large operating companies and highly regulated businesses, would apply to larger businesses. For example, the large operating companies exemption applies to entities that have more than 20 full-time employees in the United States; more than $5 million in gross receipts or sales from sources inside the United States; and have an operating presence at a physical office in the United States.[181] Using the SBA's 2019 definition of small business across all 1,037 industries (by 6-digit NAICS code), there are only 46 categories of industries whose SBA definition of small would be lower than this statutory exemption of more than 20 million employees and $5 million in gross receipts/sales. And these were predominantly related to agricultural categories. All other SBA definitions of small entity well exceeded the thresholds stated in the statutory exemption for large operating companies. Therefore, FinCEN assumes that all entities estimated to be reporting companies are small, for purposes of this analysis. FinCEN estimates that there are approximately 25 million existing reporting companies and 3 million new reporting companies formed each year.[182] As mentioned

policies and procedures, and noted that doing so would be challenging, but did not directly oppose this type of arrangement.

[175] 5 U.S.C. 601 *et seq.*

[176] CTA, Section 6402(5).

[177] *See* 5 U.S.C. 601(3).

[178] *See* U.S. Small Business Administration, *Table of Small Business Size Standards Matched to North American Industry Classification System Codes (NAICS)* (August 19, 2019), available at *https://www.sba.gov/sites/default/files/2019-08/SBA%20Table%20of%20Size%20Standards_Effective%20Aug%2019%2C%202019_Rev.pdf.*

[179] Domestic reporting companies are defined in the proposed rule as corporations, limited liability companies, or other entities that are 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 reporting companies are defined in the proposed rule as corporations, limited liability companies, or other entities that are formed under the law of a foreign country and 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. Both definitions are consistent with statutory definitions of these terms in the CTA. *See* 31 U.S.C. 5336(a)(11)(A) and proposed 31 CFR 1010.380(c)(1).

[180] FinCEN has proposed including the 23 exemptions that are statutorily mandated. *See* 31 U.S.C. 5336(a)(11)(B) and proposed 31 CFR 1010.380(c)(2).

[181] 31 U.S.C. 5336(a)(11)(xxi), and proposed 31 CFR 1010.380(c)(2)(xxi).

[182] FinCEN estimated these numbers by relying upon the most recent available data, 2018, of the annual report of jurisdictions survey administered by the International Association of Commercial Administrators in which Colorado, Delaware, Hawaii, Illinois, Indiana, Louisiana, Massachusetts, Michigan, North Carolina, Ohio, Oregon, Texas, Wisconsin, and Wyoming were asked the same series of questions on the number of total existing entities and total new entities in their jurisdictions by entity type. *See* International Association of Commercial Administrators, *Annual Report of Jurisdictions Survey—2018 Results,* (2018), available at *https://www.iaca.org/annual-reports/.* Please note this underlying source does not provide information on the number of small businesses in the aggregate entity counts, or on the revenue or number of employees of the entities in the data. FinCEN used the reported state populations, total existing entities per state, and new entities in a given year per state to calculate per capita ratios of total existing and new entities in a year for each state. FinCEN then calculated a weighted average of the per capita ratio of the 14 states to estimate a weighted per capita average for the entire United States (see Table 1 below). FinCEN then multiplied this estimated weighted average by the current U.S. population to estimate the total number of existing entities and the number of new entities in a year. FinCEN then estimated the number of exempt entities by estimating each of the relevant 23 exempt entity types. Last, FinCEN subtracted the estimated number of exempt entities from its prior estimations. This results in an approximate estimate of 25 million reporting companies currently in existence and 3 million new reporting companies per year. To review this analysis, including all sources and numbers, please see the Paperwork Reduction Act section below.

before, FinCEN assumes for purposes of estimating costs to small businesses that all reporting companies are small businesses. Such a general descriptive statement on the number of small businesses to which the rule would apply is specifically permitted under the RFA, when, as here, greater quantification is not practicable or reliable.[183] FinCEN has made this assumption in part to ensure that its IRFA does not underestimate the economic impact on small businesses. FinCEN solicits comment on whether there is a more precise way to estimate the number of small businesses that will meet the definition of reporting company with exemptions considered.

In defining ''small organization,'' the RFA generally defines it as any not-for-profit enterprise that is independently owned and operated and is not dominant in its field.[184] FinCEN anticipates that the proposed rule would not affect ''small organizations,'' as defined by the RFA because the CTA exempts any organization that is described in section 501(c) of the Internal Revenue Code of 1986 (determined without regard to section 508(a) of such Code) and exempt from tax under section 501(a) of such Code, and because the proposed rule incorporates this exemption.[185] Therefore, any small organization, as defined by the RFA, would not be a reporting company.

In defining ''small governmental jurisdiction[s],'' the RFA generally defines it as governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand.[186] FinCEN does not anticipate at this time that the proposed rule would directly affect any ''small governmental jurisdictions,'' as defined by the RFA. The CTA exempts entities that exercise governmental authority on behalf of the United States or any such Indian Tribe, state, or political subdivision from the definition of reporting company, and the proposed rule would incorporate verbatim the CTA's exemption language.[187] Therefore, small governmental jurisdictions would be uniformly exempt from reporting pursuant to the proposed rule. FinCEN is aware that certain small governmental jurisdictions may be among the state and local authorities that incur costs as they address questions on the BOI reporting rule. FinCEN does not have adequate information to estimate these possible burdens. As noted above, FinCEN would take all possible measures to minimize the costs associated with questions from the public directed at state and local government agencies and offices. In addition, FinCEN specifically solicits comments that discuss, and if possible estimate, what those costs may be, what types of small governmental jurisdictions could expect to face such costs, whether small governmental jurisdictions may face costs that are different in kind from those which larger jurisdictions may face, and how FinCEN could mitigate the burden on small governmental jurisdictions.

iii. Compliance Requirements

FinCEN recognizes that the proposed rule would impose costs on small entities to comply with the BOI reporting requirements. These costs could include: (1) Gathering relevant BOI for both initial and updated BOI reports; (2) hiring or utilizing compliance, legal, or other resources for expert advice on filing requirements; and (3) training of personnel to file the report. Possible costs of the reporting requirement are also discussed in the ANPRM comments from representatives of the small business community. One comment noted that optimizing the implementation process of the proposed rule is the most important step that FinCEN can take to reduce compliance costs for small business owners. This commenter stated that the costs to businesses of reporting the name, date of birth, address, and government ID number of a company's owner are ''incredibly low,'' citing a UK Government study on beneficial ownership reporting [188] and assuming that the United States will have a similar experience. However, the commenter stated that making the filing process modern, efficient, and integrated with state and Tribal incorporation practices would ensure a negligible compliance cost for businesses. The comment emphasized that the best opportunity to minimize small business compliance cost would be to integrate the BOI filing as seamlessly as possible into existing state-level incorporation processes. The comment also noted that technology, such as pre-verifying submitted information and requiring electronic filing, would minimize business costs during filing. A separate comment supported similar recommendations, stating that to reduce the cost of compliance for small businesses, FinCEN could collaborate with authorities in all 50 states to integrate the FinCEN filing process into existing corporate formation and registration processes; verify data as it is entered in the system; provide plenty of opportunities to learn about the BOI reporting requirement; and create a searchable hub of information on the requirements. An additional comment noted that using familiar processes with minimal burdens would protect small businesses; the same comment also stated that FinCEN should conduct a small business impact analyses of the proposed regulation.

FinCEN did consider an alternative scenario in which reporting companies would submit BOI to their state authority in the Executive Orders 12866 and 13563 section above. Ultimately, FinCEN decided not to propose this alternative. FinCEN would strive to minimize costs by ensuring that small businesses are aware of the reporting requirement. Table 9 below illustrates how a reduction in the time burden for reporting the required information would decrease costs for reporting companies.

Another comment stated that the reporting requirements would create significant unintended consequences with new burdens and complexity for nearly 4.9 million American small businesses, resulting in an additional $5.7 billion in regulatory paperwork.[189] The comment further stated that the reporting requirement is not necessary because the information is already collected and proposed that a simple alternative would be to allow FinCEN to review information provided to the IRS in tax filings. To the extent that similar information may be reported to the IRS, the disclosure of taxpayer information is limited by statute, and the IRS generally does not have the authority to disclose such information for the purposes specified in the CTA.

As noted previously, FinCEN estimates that small businesses across multiple industries would be subject to these requirements. Assuming that all reporting companies are small businesses, the burden hours for filing

[183] The RFA provides that an agency may provide a more general descriptive statement of the effects of a proposed rule if quantification is not practicable or reliable. 5 U.S.C. 607.

[184] 5 U.S.C. 601(4).

[185] 31 U.S.C. 5336(a)(11)(xix)(I), and proposed 31 CFR 1010.380(c)(2)(xix).

[186] 5 U.S.C. 601(5).

[187] 31 U.S.C. 5536(a)(11)(ii)(II) and proposed 31 CFR 1010.380(c)(2)(ii).

[188] FinCEN cites to the UK study within this NPRM. *See* United Kingdom Department for Business, Energy & Industrial Strategy, *Review of the Implementation of the PSC Register,* (March 2019), p. 16, available at *https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/822823/review-implementation-psc-register.pdf.*

[189] The comment does not provide the sources for these estimates.

BOI reports would be 32,800,422 [190] in the first year of the reporting requirement (as existing small businesses come into compliance with the proposed rule) and 9,468,510 [191] in the years after. FinCEN estimates that the total cost of filing BOI reports is approximately $1.26 billion [192] in the first year and $364 million [193] in the years after. FinCEN estimates it would cost the 25 million domestic and foreign reporting companies that are estimated to currently exist approximately $45 each to prepare and submit an initial report for the first year that the BOI reporting requirements are in effect.[194] FinCEN intends that the reporting requirement would be accessible to the personnel of reporting companies who would need to comply with these regulations and would not require specific professional skills or expertise to prepare the report. However, FinCEN is aware that some reporting companies may seek legal or other professional advice in complying with the BOI requirements. FinCEN seeks comment on whether small businesses anticipate requiring professional expertise to comply with the BOI requirements described herein and what FinCEN could do to minimize the need for such expertise.

iv. Duplicative, Overlapping, or Conflicting Federal Rules

There are no Federal rules that directly and fully duplicate, overlap, or conflict with the proposed rule. FinCEN recognizes that the CTA requires the Administrator for Federal Procurement Policy to revise the Federal Acquisition Regulation maintained under 41 U.S.C. 1303(a)(1) to require any contractor or subcontractor that is subject to the reporting requirements of the CTA and proposed rule to disclose the same information to the Federal Government as part of any bid or proposal for a contract that meets the threshold set in 41 U.S.C. 134.[195] FinCEN would collaborate with the Administrator for Federal Procurement Policy and other Government agencies as necessary to reduce, to the extent possible, any duplication of the CTA requirements. Additionally, Section 885 of the NDAA includes a separate beneficial ownership disclosure requirement in the database for federal agency contract and grant officers.

FinCEN is aware that the IRS collects taxpayer information that may include information related to beneficial ownership, such as information on entity ownership structure and identifying information about such owners and entities. However, disclosure of taxpayer information is limited by statute, and the IRS generally does not have authority to disclose such information for the purposes specified in the CTA.

FinCEN is also aware that financial institutions subject to the CDD Rule are required to collect some BOI from legal entities that establish new accounts. However, the CDD Rule does not require these financial institutions to file a report of that BOI with FinCEN, and FinCEN has long viewed the CDD Rule and BOI reporting at entity formation as distinct.[196] Furthermore, the CTA requires that the CDD Rule be revised, retaining the general requirement for financial institutions to identify and verify the beneficial owners of legal entity customers but rescinding the specific requirements of 31 CFR 1010.230(b)–(j). The CTA explicitly identifies three purposes for this revision: to bring the rule into conformity with the AML Act as a whole, including the CTA; to account for the fact that financial institutions would have access to BOI reported to FinCEN ''in order to confirm the [BOI] provided directly to the financial institutions'' for AML/CFT and customer due diligence purposes; and to reduce unnecessary or duplicative burdens on financial institutions and customers. This revision must be accomplished within one year after the effective date of the BOI reporting rule.

v. Significant Alternatives That Reduce Burden on Small Entities

Given that FinCEN assumes that all reporting companies would be small entities, the alternatives discussion in the Paperwork Reduction Act section below (see Table 8), which analyzes alternatives to the specific reporting requirements of the rule, describes in greater detail several alternatives that would reduce the burden on small entities.[197] A brief overview of the alternative analysis is summarized in this section. The alternative scenarios considered include: (1) The length of the initial reporting period; and (2) the length of time to file an updated report.

In the first alternative, FinCEN lengthened the timeframe in which initial reports may be submitted by companies that are in existence when the eventual final rule comes into effect. Specifically, FinCEN lengthened the current proposal's BOI compliance requirement from one year to two years, which is permissible under the CTA.[198] After applying several more assumptions, including but not limited to assuming half of the existing reporting companies would file their initial BOI report in Year 1 and the other half would file in Year 2, FinCEN estimated that the cost of the proposed rule would be approximately $637 million less in Year 1 and approximately $358 million more in Year 2 under this alternative scenario of extending the compliance timeframe from one to two years. This would translate into a decreased net present value cost over a ten-year horizon by approximately $281 at a three percent discount rate or $283 million at a seven percent discount rate.

In the second alternative, FinCEN lengthened the timeframe for updated reports from the proposed 30 days to one year, which is again permissible under the CTA.[199] After applying several assumptions, including but not limited to assuming updates would be ''bundled,'' meaning that a reporting company would submit one updated report to account for multiple updates, which would in turn result in an increased burden of filing due to increased information per report, FinCEN estimated that the total cost of the proposed rule would be approximately $238 million at a seven percent discount rate or $293 million at a three percent discount rate less in net present value over a ten-year horizon under this alternative scenario of increasing the timeframe for updated reports.

Additionally, FinCEN considered an alternative scenario in the Executive Orders 12866 and 13563 section above

[190] 30,186,029 hours to file initial BOI reports + 2,614,392 hours to file updated BOI reports. Please see the Paperwork Reduction Act section below for the underlying analysis related to these burden hour estimates.

[191] 3,764,381 hours to file initial BOI reports + 5,704,129 hours to file updated BOI reports. Please see the Paperwork Reduction Act section below for the underlying analysis related to these burden hour estimates.

[192] $1,160,332.854.17 to file initial BOI reports + $100,495,669.61 to file updated BOI reports. FinCEN estimated cost using a loaded wage rate of $38.44 per hour. Please see the Paperwork Reduction Act section below for the underlying analysis related to these cost estimates.

[193] $144,700,558.43 to file initial BOI reports + $219,263,279.14 to file updated BOI reports. FinCEN estimated cost using a loaded wage rate of $38.44 per hour. Please see the Paperwork Reduction Act section below for the underlying analysis related to these cost estimates.

[194] $1,160,332,854.17/25,873,739 reporting companies = $44.85, approximately $45.

[195] 31 U.S.C. 5336(c)(1).

[196] *See, e.g.,* 81 FR 29398, 29401 (discussion of multipronged strategy in the implementing notice for the CDD Rule).

[197] The alternative scenario discussed in the Executive Orders 12866 and 13563 section above that relies on states to collect BOI is not expected to reduce burden on small entities.

[198] *See* 31 U.S.C. 5336(b)(1)(B).

[199] *See* 31 U.S.C. 5336(b)(1)(D).

in which reporting companies would submit BOI to FinCEN indirectly, by submitting the information to their jurisdictional authority who would then transmit it to FinCEN. Some commenters to the ANPRM noted that this alternative would decrease the compliance burden on small entities. However, FinCEN ultimately decided not to propose this alternative for the reasons stated above. FinCEN welcomes comment on any significant alternatives that would minimize the impact of the proposed rule on small entities and still accomplish the objectives of the CTA.

C. Unfunded Mandates Reform Act

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) [200] requires that an agency prepare a statement before promulgating a rule that may result in expenditure by the state, local, and Tribal governments, in the aggregate, or by the private sector, of $158 million or more in any one year.[201] Section 202 of the UMRA also requires an agency to identify and consider a reasonable number of regulatory alternatives before promulgating a rule, which FinCEN has completed in the Executive Orders 12866 and 13563 section above and the Paperwork Reduction Act section below. This rule in its proposed form may result in the expenditure by state, local, and Tribal governments, in the aggregate, or by the private sector, of $158 million or more.

The proposed rule is being promulgated to implement the CTA. The primary cost of the private sector complying with the proposed rule is captured in the Paperwork Reduction Act section below, which amount to a net present value for a 10-year time horizon at a seven percent discount rate of approximately $3.4 billion. The net present value at a three percent discount rate is approximately $3.98 billion. Both of these amounts exceed the threshold under UMRA. Additional discussion on the proposed rule's costs and benefits may be found in the Executive Orders 12866 and 13563 section above. While state, local and Tribal governments do not have direct costs mandated to them by the proposed rule, state, local, and Tribal governments may incur indirect costs under the proposed rule, including if they wish to expend funds to provide notice and assistance to filers.[202]

FinCEN received multiple ANPRM comments that described possible costs that state, local, and Tribal governments could incur,[203] such as:

- Collecting or reporting additional BOI data to FinCEN;
- Generating a unique identifier that would link BOI reports with state documents;
- Sending customers notice about the BOI reporting requirement by mail or email;
- Adding an internet link to office website and/or on publications sent to new business filers; and
- Sharing language/information provided by FinCEN to customers.

As noted above, various comments stated that collecting and reporting additional BOI data to FinCEN would require a change to state law and development of a new processing system, both of which would generate significant costs and burden. One comment from a state government stated these type of changes could easily cost a million dollars or more for a single state government. Some other comments from state authorities also noted technological limitations with sharing existing records with FinCEN. State-level collection and reporting of additional BOI data was strongly opposed by multiple commenters, including state governments. However, it is worth noting that some private sector comments argued for incorporating BOI reporting with existing state registration processes. For example, one private sector comment noted that FinCEN's best opportunity to minimize small business compliance cost is to integrate the FinCEN filing as seamlessly as possible into existing state-level incorporation processes. This alternative is considered more fully in the Executive Orders 12866 and 13563 section above.

Commenters from state offices stated that mailing a paper notice to representatives of entities registered in their jurisdiction is a significant cost, and that most filing offices only have a mailing address for the registered agent of a business entity. One secretary of state comment estimated the cost of annual mailings at more than $300,000, which would increase along with the total amount of active entities. Some secretary of state comments also specified that secretaries of state should provide notice only to domestic entities in their jurisdiction, not foreign business entities, and that such reminders should coincide with the states' report filing period. However, one private sector commenter proposed that state offices send reminders of the requirement via mail.

Multiple secretary of state commenters supported a requirement that states add an internet link to their office website and/or on publications sent to new business filers, with language provided by FinCEN to ensure all states share the same information and that directs customers to FinCEN for questions.

Some secretary of state comments noted that state agencies would not have the legal expertise, authority, or resources to respond to questions about the BOI reporting requirements. Therefore, they argued, FinCEN should circulate the required periodic notices to reporting (and potentially exempt) entities, and every such periodic notice must have clear and prominently displayed contact information for FinCEN. One secretary of state comment noted that providing states with FinCEN-branded materials to help differentiate from secretary of state-branded communication is important and may help deflect some questions from states directly to FinCEN. A comment from a secretary of state stated that it anticipates that staff time would be devoted to responding to calls and emails from business entities regarding compliance with the rule, but additional staffing is not expected. The comment stated that FinCEN can minimize burdens on agencies receiving business filings in part by providing sufficient resources for such agencies to direct business entities to in response to inquiries. Another secretary of state noted that template language from FinCEN is helpful, but they wanted to retain flexibility to tailor the information. One commenter representing Tribal interests noted that Indian Tribes first should be given the opportunity to identify whether or not the Tribe is capable of sharing reporting obligations and/or internet links and what may be necessary for the Tribe to carry out the obligations of the CTA and

[200] *See* 2 U.S.C. 1532(a).

[201] The UMRA threshold is $100 million per year adjusted for inflation, which is currently $158 million per year.

[202] The CTA states that as a condition of funds made available under the CTA, each state and Indian Tribe shall, not later than 2 years after the effective date of the regulations, take the following actions: (1) Periodically notifying filers—including at the time of any initial formation or registration of an entity, assessment of an annual fee, or renewal of any license to do business in the United States and in connection with state or Indian Tribe corporate tax assessments or renewals, notification to filers of their requirements as reporting companies and provider—with a copy of the reporting company form or an internet link to that form; and (2) updating the websites, forms relating to incorporation, and physical premises of the office to notify filers of the BOI reporting requirements, including by providing an internet link. 31 U.S.C. 5336(e)(2)(A). The provision of these funds depends on availability of appropriations. However, states and Indian Tribes may wish to provide information about the BOI reporting requirement regardless of the availability of such funds.

[203] FinCEN also received comments from state, local, and Tribal governments that related to other topics; however, these comments are not summarized herein.

the final promulgated rules and regulations, among other items. FinCEN welcomes additional comments describing these items in more detail and ways in which FinCEN may address them in its rule.

FinCEN appreciates the issues the commenters raised regarding the possibility of state, local, and Tribal governments incurring indirect costs due to the BOI reporting requirement, particularly in the form of compliance questions being directed to such authorities. State, local, and Tribal governments play an important role in spreading awareness to entities, many of which may have no knowledge of FinCEN or about the new BOI reporting requirements. FinCEN endeavors to make publicly available clear and concise guidance documents. FinCEN will work closely with state, local, and Tribal governments to ensure effective outreach strategies for implementation of the eventual final rule.[204] Additionally, FinCEN has a call center (the Regulatory Support Section) which will receive incoming inquiries relating to the CTA and its implementation. Finally, FinCEN considered and ultimately decided not to propose an alternative that would have relied upon state, local, and Tribal governments in the collection and reporting of BOI.

FinCEN is not aware at this time of disproportionate budgetary effects of this proposed rule upon any particular regions of the nation or particular state, local, or Tribal governments; urban, rural or other types of communities; or particular segments of the private sector.[205] The wide-reaching scope of the reporting company definition means that the proposed rule would apply to entities across multiple private sector segments, types of communities, and nationwide regions. FinCEN acknowledges that there is potential variance in the concentration of reporting companies by region due to variation in corporate formation rates and laws. FinCEN also acknowledges that the statutory exemptions to the reporting company definition may in practice result in segments of the private sector not being affected by the proposed rule; thereby causing those that are affected to be disproportionately so compared to exempt entities. FinCEN welcomes any estimates on how such regions, and the regions' related governments, could be disproportionately affected by this proposed rule. FinCEN also welcomes any input on estimated disproportionate budgetary effects for particular segments of the private sector.

FinCEN does not at this time have accurate estimates that are reasonably feasible regarding the effect of the proposed rule on productivity, economic growth, full employment, creation of productive jobs, and international competitiveness of United States goods and services.

D. Paperwork Reduction Act

The new reporting requirements in this proposed rule are being submitted to OMB for review in accordance with the Paperwork Reduction Act of 1995 [206] (PRA). Under the PRA, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by OMB. Written comments and recommendations for the proposed information collection can be submitted by visiting *www.reginfo.gov/public/do/PRAMain.* Find this particular document by selecting ''Currently Under Review—Open for Public Comments'' or by using the search function. Comments are welcome and must be received by February 7, 2022. In accordance with the requirements of the PRA and its implementing regulations, 5 CFR part 1320, the following details concerning the collections of information are presented to assist those persons wishing to comment.

As noted above, the primary cost for entities associated with the proposed rule would result from the requirement that reporting companies must file a BOI report with FinCEN, and update those reports as appropriate. FinCEN has also estimated costs that may be incurred related to individuals who may choose to apply for a FinCEN identifier, and related to foreign pooled investment vehicles that would need to submit a report to FinCEN, as well as the costs that would be incurred to update the information contained in those applications and reports.

i. Filing BOI Reports

There are three factors that FinCEN has considered in estimating the number of reporting companies that would file BOI reports under the rule, all of which contain uncertainty: (1) The total number of entities that *could* be reporting companies (*i.e.,* estimating the total number of corporations, limited liability companies, and other entities); (2) how many of those entities would be exempt from the definition of a reporting company (*i.e.,* removing from the estimates of total number of entities those that are estimated to satisfy relevant exemptions); and (3) how often those entities that meet the definition of reporting company would need to update their initial reports.[207] FinCEN welcomes comments on all aspects of this analysis.

a. Total Number of Entities That Could be Reporting Companies

The first step in this analysis is for FinCEN to estimate the number of domestic entities, regardless of the entity type,[208] that are in existence at the effective date of the regulation and that are newly created each year. As noted above, FinCEN assumes that the number of new entities each year equals the number of dissolved entities. FinCEN also must estimate the number of foreign entities already registered to do business in one or more jurisdictions within the United States at the effective date of the regulation and the number that are newly registered each year. FinCEN also assumes that the number of new foreign registered businesses is balanced by the number of existing foreign registered businesses that terminate. FinCEN does not have definitive counts of these entities but has identified information from the following sources as relevant to its initial estimates; none of this

[204] Multiple ANPRM comments from state authorities spoke to the feasibility of adding an internet link to their websites.

[205] Though entities that have chosen complex ownership structures are likely to face higher burden, FinCEN is not aware of a particular segment of the private sector that this would disproportionately affect.

[206] *See* 44 U.S.C. 3506(c)(2)(A).

[207] FinCEN recognizes that reporting companies may also dissolve annually, but FinCEN assumes that the number of entities created and dissolved each year is roughly the same, and therefore the number of overall reporting companies is not likely to vary greatly year-to-year. This assumption is supported by Figure 3 of the SBA's Office of Advocacy 2020 Small Business Profile Report (*See* U.S. Small Business Administration Office of Advocacy, *2020 Small Business Profile,* (2020) available at *https://cdn.advocacy.sba.gov/wp-content/uploads/2020/06/04144224/2020-Small-Business-Economic-Profile-US.pdf*), which shows very little change, on average, to the net entity count. And in the instances in time that observe a large change in growth, there is an opposite and roughly equal in magnitude growth change in the immediately subsequent time period. FinCEN does account for an annual number of *initial* reports from newly created reporting companies in its estimates but assumes that each new entity is balanced by a reporting company which dissolves in the overall count of reporting companies.

[208] While the proposed definition of ''domestic reporting company'' is any entity that is a corporation, limited liability corporation, or other entity that is 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, FinCEN is not limiting its estimate of domestic entities to specific entity types or to entities that are created by such a filing. This simplifies the analysis but may produce overall estimates of costs that exceed the actual costs.

information can be used without caveats:

• *FATF:* In its 2016 mutual evaluation of the United States, FATF noted that there are ''no precise statistics on the exact number of legal entities,'' but cited estimates that there are around 30 million legal entities in the United States, with about two million new formations every year.[209]

• *CDD Rule:* In the CDD Rule, FinCEN estimated 8 million new legal entity bank accounts are opened per year.[210] However, this number could include multiple accounts for any given entity, and not all entities open a bank account annually.

• *Census data:* FinCEN reviewed statistics published by the U.S. Census Bureau, particularly from the Statistics of U.S. Businesses (SUSB). However, FinCEN is not aware of a methodology that may be applied to ''carve out'' entities that meet the definition of reporting companies from the SUSB data. FinCEN has relied upon Census data in some instances below related to estimates of exempt entities.

• *State statistics:* FinCEN reviewed online publications from state governments that provided statistics on business entities, including statistics on total active companies and new company formations. However, the information appeared to only be available from a limited number of states. Furthermore, the categories of reported statistics are not consistent and each state may have unique company definitions that make it difficult to assess which entities would fall under the proposed rule. FinCEN also reviewed comments to the ANPRM that included some relevant estimates reported by state authorities.[211]

• *International Association of Commercial Administrators (IACA) 2018 annual reports survey:* FinCEN reviewed the most recent iteration, 2018, of the annual report of jurisdictions survey administered by the IACA [212] in which Colorado, Delaware, Hawaii, Illinois, Indiana, Louisiana, Massachusetts, Michigan, North Carolina, Ohio, Oregon, Texas, Wisconsin, and Wyoming, were asked the same series of questions on the number of total entities and total new entities in their jurisdictions by entity type and responded with statistical data.

While these sources do not provide a complete picture of entities in the United States, they are useful in providing an approximate range for estimation and for highlighting the likely variation among states in numbers of reporting companies. Overall, the sources FinCEN reviewed suggest that tens of millions of entities may be subject to the proposed rule. FinCEN believes that the IACA 2018 annual reports survey data is the most relevant information for estimating the total number of existing domestic reporting companies. The survey provides consistency in format and response among multiple states.[213] The survey specifically includes data on the number of corporations, professional corporations, nonprofit corporations, limited liability companies, and partnerships. FinCEN acknowledges that this data may not exactly match the definition of ''domestic reporting company'' in the proposed rule, and may have other limitations.[214] In addition, FinCEN is not able to confirm whether trusts that may qualify as reporting companies are counted within the IACA data because they are not specified in a category. FinCEN welcomes comments that provide estimations on the number of trusts and other particular types of entities that may fall under the proposed rule.[215]

To leverage the IACA 2018 annual reports survey data in order to estimate total domestic reporting companies, FinCEN conducted the following analysis:

1. FinCEN first transcribed data reported by each of the states listed above in response to questions 1–18 of the survey.[216] FinCEN did not transcribe

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[209] FATF, *Anti-Money Laundering and Counter-Terrorist Financing Measures United States Mutual Evaluation Report* (2016), p. 34 (Ch. 1), available at *https://www.fatf-gafi.org/media/fatf/documents/reports/mer4/MER-United-States-2016.pdf* . These estimations were also relied upon by the Congressional Research Service. *See* Congressional Research Service, *Beneficial Ownership Transparency in Corporate Formation, Shell Companies, Real Estate, and Financial Transactions* (July 8, 2019), available at *https://fas.org/sgp/crs/misc/R45798.pdf.* FATF's 2006 Mutual Evaluation of the United States estimated, based on information from the International Association of Commercial Administrators provided by Delaware state officials, that in 2004 there were 13,484,336 active legal entities registered in the 50 states in the U.S. FATF, *Mutual Evaluation of the United States* (2006), p. 13 (Ch. 1), available at *https://www.fatf-gafi.org/media/fatf/documents/reports/mer/MER%20US%20full.pdf.*

[210] 81 FR 29398, 29436.

[211] FinCEN received such comments from Colorado, Connecticut, Indiana, Iowa, Kentucky, Massachusetts, North Carolina, and Pennsylvania. Some of the states provided estimates of total active companies and the average number of new companies formed annually. FinCEN welcomes further comments on these statistics, and also requests that any reported statistics explain what entity types are included, whether the counts include entities foreign and domestic to the jurisdiction, and if possible, whether the statistics include: (1) Only entities that would be defined as a ''reporting company'' in the proposed rule; and (2) any entities that would be included in the 23 exemption categories.

[212] *See* International Association of Commercial Administrators, *Annual Report of Jurisdictions Survey—2018 Results,* (2018), available at *https://www.iaca.org/annual-reports/.*

[213] FinCEN notes that four of the states that provided estimates of entities in their jurisdiction in their ANPRM comment letters also responded to the 2018 IACA survey: Colorado, Indiana, Massachusetts, and North Carolina. FinCEN used the estimates reported in the IACA survey for its analysis, rather than the estimates in the comment letters, for purposes of consistency. Additionally, FinCEN understands that the IACA data is narrowed to companies that are in good standing or active and specific entity types, both of which make the overall estimates more applicable to the ''reporting company'' category.

[214] For example, FinCEN cannot identify the precise number of general partnerships from the IACA count to the extent a state reported on the number of general partnerships—since the numbers were not reported separately by the reporting states. FinCEN assumes that some states did not include general partnerships in these statistics because they may not be required to register with the secretaries of state, and therefore may not be in the underlying data source. In a comment to the ANPRM, the Ohio Secretary of State noted that general partnerships follow a different process. Michigan's Department of Licensing and Regulatory Affairs also noted in a comment that co-partnerships do not file with the state-level office, but with the relevant County Clerk. FinCEN did compare the estimates of partnerships in IACA's data with 2018 IRS data that shows 527,595 domestic general partnerships and 446,713 limited partnerships, totaling 974,308 partnerships. The IRS data also includes numbers of partners, which could provide insight into the number of beneficial owners reported for these entities. *See* IRS, *Statistical Tables—By Entity Type,* available at *https://www.irs.gov/statistics/soi-tax-stats-partnership-statistics.* FinCEN compared these numbers with an estimate of total partnerships based on IACA's data, using the per capita analysis described below, which resulted in approximately 1.7 million partnerships. FinCEN notes that the IRS numbers, which are over 50 percent general partnerships, are lower than FinCEN's estimate using IACA data. However, FinCEN understands that IRS data only includes partnerships that filed tax returns. Therefore, even with the potential inclusion of general partnerships, IACA's data is more inclusive and a better data source for purposes of the reporting company estimation.

[215] IRS data from 2014 shows that the total number of returns for complex trusts, simple trusts, grantor trusts, decedent's estates, qualified disability trusts, Chapter 7 bankruptcy estates, split-interest trusts, qualified funeral trusts, Chapter 11 bankruptcy estates, and pooled income funds is 3,170,667. *See* IRS, *SOI Tax Stats—Fiduciary Returns—Sources of Income, Deductions, and Tax Liability—Type of Entity,* available at *https://www.irs.gov/statistics/soi-tax-stats-fiduciary-returns-sources-of-income-deductions-and-tax-liability-by-type-of-entity.*

[216] The questions (Q) are the following: Q1 Jurisdiction; Q2 Total population of your Jurisdiction; Q3 Total number of Corporations and Professional Corporations; Q4 Total number of Nonprofit Corporations; Q5 Total number of Limited Liability Companies; Q6 Total Number of Partnerships (GPs, LPs, LLPs, etc. . . .); Q7 Total number of registered Corporations and Professional Corporations; Q8 Total number of registered Nonprofit Corporations; Q9 Total number of registered Limited Liability Companies; Q10 Total number of registered Partnerships (GPs, LPs, LLPs, etc. . . .); Q11 Total number of new Corporations and Professional Corporations; Q12 Total number of new Nonprofit Corporations; Q13 Total number of new Limited Liability Companies; Q14 Total number of new Partnerships (GPs, LPs, LLPs, etc. . . .); Q15 Total number of new Foreign Corporations and Professional Corporations; Q16 Total number of new Foreign Nonprofit

the responses to the other questions because they did not relate to the number of entities.

2. FinCEN then considered which data to total in order to estimate the: (1) Total number of existing entities; and (2) total number of new entities within a year.

a. FinCEN totaled the numbers reported for Q3 (Corporations and Professional Corporations), Q4 (Nonprofit Corporations), Q5 (limited liability companies), and Q6 (Partnerships) for each state in order to estimate the existing entities as of 2018. FinCEN did not total the responses to Q7–Q10, which are ''registered'' companies, because FinCEN assumes that those registered entities are foreign to the state in question.[217] As noted above, the counts for Q6 may include general partnerships for some jurisdictions which may not be considered reporting companies; however, because they are grouped with limited partnerships and limited liability partnerships in this survey, FinCEN is retaining this number as part of its estimate.

b. FinCEN totaled the numbers reported for Q11–Q14—data that mirrors the categories from Q3–Q6—for each state in order to estimate the new entities created in one year (2018). One of the survey respondents, Wyoming, did not provide responses to these questions. FinCEN did not total the responses to Q15–Q18, which relate to ''new [f]oreign'' entity types, because FinCEN understands that ''foreign'' entities counted here could be entities formed in another state. Therefore, there could be double-counting across states if an entity is formed in one state and registered in others.

3. FinCEN next created a table listing each state, the population reported by each state in response to Q2,[218] the totals for Q3–Q6 (total entities), and totals for Q11–Q14 (new entities). FinCEN then calculated a per capita rate of total entities and a per capita rate of new entities by dividing the population by these totals; see Table 1.

TABLE 1—DOMESTIC ENTITIES PER CAPITA ANALYSIS

State	Population	Total entities	New entities	Per capita total entities	Per capita new entities
Colorado	5,761,252	641,174	112,165	0.11129074	0.019468859
Delaware	967,171	1,372,130	213,697	1.418704655	0.220950587
Hawaii	1,420,000	120,779	14,626	0.085055634	0.0103
Illinois	12,770,000	802,880	98,303	0.062872357	0.007697964
Indiana	6,700,000	406,408	51,135	0.06065791	0.00763209
Louisiana	4,680,000	423,755	52,389	0.09054594	0.011194231
Massachusetts	6,902,000	351,363	41,029	0.050907418	0.005944509
Michigan	9,995,915	831,973	100,550	0.0832313	0.010059109
North Carolina	10,350,000	647,632	88,052	0.06257314	0.00850744
Ohio	11,730,719	838,850	89,495	0.071508831	0.007629096
Oregon	4,191,000	1,319,082	110,694	0.314741589	0.026412312
Texas	29,100,000	1,761,695	236,505	0.060539347	0.00812732
Wisconsin	5,795,000	419,644	43,495	0.07241484	0.007505608
Wyoming	568,125	155,010	.....	0.272844884	.....

4. FinCEN then calculated a weighted average (weighted by population) for both per capita estimates to find a weighted average per capita rate for the United States.

a. The weighted average per capita rate for total companies is: 0.090978702.

b. The weighted average per capita rate for new companies is: 0.011345597.[219]

5. Finally, FinCEN estimated the total companies and new companies per year by multiplying the per capita rates by the U.S. population as of 2021:[220]

a. Total entities estimate: 30,247,071.10.

b. Total new entities per year estimate: 3,771,993.58.

While the IACA data provides a window into the total number of domestic entities, FinCEN turned to other sources to identify possible estimates for the number of foreign (non-U.S.) entities that are registered to do business in the United States, and therefore would be a reporting company for purposes of the proposed rule.[221] FinCEN is proposing the following estimate based on tax filing data, although FinCEN acknowledges that this data may not exactly match the definition of ''foreign reporting company'' in the proposed rule. In 2018 there were approximately 22,000 partnership tax returns filed by foreign partnerships.[222] Using the same scaling process as noted above, the estimate for

Corporations; Q17 Total number of new Foreign Limited Liability Companies; Q18 Total number of new Foreign Partnerships (GPs, LPs, LLPs, etc. . . .).

[217] The prior year of the IACA survey (2017) worded questions differently than the 2018 survey. For example, the 2017 survey included ''the total number of domestic and foreign for-profit corporations and professional corporations on file (in good standing or active)'' as Q6. FinCEN assumes that this question covers the same entities as Q3 (''total number of Corporations and Professional Corporations'') and Q7 (''total number of registered Corporations and Professional Corporations'') in the 2018 survey. Given this, FinCEN assumes that the number of ''registered'' entities in the 2018 survey aligns with foreign entities. FinCEN understands foreign in this context to mean outside of the jurisdiction, but potentially still within the United States. In order to avoid double-counting the same entity across multiple states, FinCEN is not including ''registered'' entities in its analysis. At least one state in the 2018 survey, Illinois, specified that their numbers in response to Q3 included domestic and foreign companies. However, FinCEN is retaining Illinois in its analysis for consistency. Illinois' per capita average is lower than the weighted per capita average, which alleviates any concern that it would create a significant upward bias in the nationwide weighted average (see Table 1).

[218] Wisconsin specified that its population estimate was from 2017.

[219] Wyoming is excluded from this calculation since it did not provide statistics on new companies.

[220] FinCEN assumes that there is proportional growth between the population and formation of new entities over time for purposes of estimating the total number of existing and registered entities as of today. Although this assumption is arguably in tension with the assumption of zero net company formation in subsequent years, neither assumptions plays a significant role in estimation of total costs over the time period analyzed.

[221] Although some of the IACA questions referenced ''foreign'' entities, as noted above FinCEN understands that those numbers may include entities formed in *another state* and entities formed in *another country.* FinCEN is only interested in the latter number for these purposes, which cannot be derived from IACA data in the same way that FinCEN derived the number of entities formed *in each state.*

[222] FinCEN understands that, in the vast majority of cases, foreign partnerships file a U.S. partnership tax return because they engage in a trade or business in the United States; however, this may not always be the case.

2021 is 22,263.39.[223] In addition, in 2018 an estimated 21,000 foreign corporations filed the Form 1120–F (''U.S. Income Tax Return of a Foreign Corporation'')—scaled for 2021 to 21,251.42.[224] Adding these two estimates (22,263.39 + 21,251.42) results in an overall estimate of approximately 43,514.81 foreign entities operating in the United States that may be subject to BOI reporting requirements. To estimate new foreign companies annually, FinCEN multiplied the estimate of total foreign companies as of 2021 (43,514.81) by the ratio of estimated new entities to total entities based on the IACA data analysis above (3,771,993.58/30,247,071.10). The estimation is approximately 5,426.56.

Therefore, it is reasonable, given the data reviewed and these considerations, to estimate that there are 30,290,586 existing companies that *could* be reporting companies. It is also reasonable to estimate that there are 3,777,420 new companies per year that *could* be reporting companies.

b. Entities That Are Not Exempt From the Definition of a Reporting Company

As to FinCEN's second estimate, the number of entities that would be reporting companies would be less than 100 percent of the entities that *could* be reporting entities because some of the entities that comprise the total number of entities would be exempt from the definition of ''reporting company'' pursuant to one or more of the exemptions found at proposed 31 CFR 1010.380(c)(2)(i)–(xxiii).

In order to estimate the number of exempt entities to subtract from the first estimate of entities that are estimated to be corporations, limited liability companies, or other entities, FinCEN considered the following:

1. A reasonable estimate for the number of existing entities under each of the exemptions.

2. Whether each of the entities described in the exemptions: (1) Meet the proposed definition of ''reporting company'' (*i.e.,* is the exempt entity formed or registered by filing with the secretary of state or similar office); and (2) is included in the IACA annual reports survey estimates (*i.e.,* does the exempt entity fall into a category reported by the states in the IACA annual reports survey used to estimate the number of corporations, limited liability companies, or other entities as described above).

3. Whether there is overlap between exemption categories, and whether the number of entities that overlap can be estimated.

To address the first item, the number of existing entities under each of the exemptions, FinCEN conducted research and outreach to multiple stakeholders to identify a reasonable estimate for each exemption. When the data was historical, FinCEN ''scaled'' the estimate to 2021, scaling the estimate based on overall U.S. population growth from the date of the estimate to June 2021. FinCEN considered whether the data underlying FinCEN's estimate of exempt entities in each exemption category aligns with the proposed definition of the exemption in this NPRM. The sources used for these estimates should not be viewed as encompassing all entities that may be captured under the definition. Additionally, the sources should not be understood to convey any interpretation of the exemptions' definitions. FinCEN identified sources for estimates using what it believes to be the best data available *related to* the exemption in question, and welcomes other sources or clarifications on these estimates that may be provided through the rulemaking process. Furthermore, these estimates are based on multiple data sources that may not always align; meaning that the data source for an exemption may not only or totally include the entities subject to the exemption that are included in the total companies' estimate. Each exemption estimate is considered in detail below.

1. *Securities and Exchange Commission (SEC) reporting issuers:* FinCEN proposes relying upon the World Bank's data of listed domestic companies in the United States as of 2019. Listed domestic companies, including foreign companies that are exclusively listed,[225] are those that have shares listed on an exchange at the end of the year. Investment funds, unit trusts, and companies whose only business goal is to hold shares of other listed companies, such as holding companies and investment companies, regardless of their legal status, are excluded. A company with several classes of shares is counted once. Only companies admitted to listing on the exchange are included. This estimate is 4,266.[226] FinCEN scaled this number to 4,294.89.[227]

2. *Governmental authorities:* FinCEN proposes relying upon the U.S. Census Bureau's 2017 Census of Governments for this estimate. FinCEN accessed the publicly available zip file ''Table 1. Government Units by State: Census Years 1942 to 2017'' and the ''Data'' Excel file included therein. The Excel file lists the total number of Federal, state, and local government units in the United States as of 2017 as 90,126. [228] FinCEN scaled this number to 91,741.49; [229] FinCEN welcomes comments regarding whether this is a category that is less likely to scale by population.

3. *Banks:* FinCEN accessed the number of Federal Deposit Insurance Corporation (FDIC)-insured entities as of October 20, 2021, through the ''Institution Directory'' on FDIC's Data Tools website. FinCEN searched for active institutions anywhere in the United States, which resulted in 4,916 institutions.[230] FinCEN also considered whether to include uninsured entities that are required to implement written AML program as a result of a final rule issued on September 15, 2020,[231] in this estimate; however, given that the exemption may or may not apply to these entities, FinCEN is not including them at this time.

4. *Credit unions:* There are 4,999 federally insured credit unions as of October 20, 2021.[232]

5. *Depository institution holding companies:* According to a report from

[223] 22,000 × 1.011972411.

[224] 21,000 × 1.011972411.

[225] This estimate may therefore include entities that are not part of the ''total entities'' previously calculated. However, FinCEN assesses that the number of foreign companies included is sufficiently small to be trivial.

[226] *See* The World Bank Data, *Listed domestic companies, total—United States,* available at *https://data.worldbank.org/indicator/CM.MKT.LDOM.NO?locations=US.*

[227] This was calculated by multiplying the estimate by a ''2019 scaling factor'' of 1.006772611. The scaling factor was calculated by dividing the U.S. population as of July 1, 2019 (330,226,709) by the U.S. population as of June 27, 2021 (332,463,206). These population estimates were found at the Census Bureau's population clock. *See* U.S. Census Bureau, *U.S. and World Population Clock,* available at *https://www.census.gov/popclock/.*

[228] *See* U.S. Census Bureau, *Table 1. Government Units by State: Census Years 1942 to 2017,* available at *https://www.census.gov/data/tables/2017/econ/gus/2017-governments.html.*

[229] This was calculated by multiplying the estimate by a ''2017 scaling factor'' of 1.017924839. The scaling factor was calculated by diving the U.S. population as of July 1, 2017 (326,608,796) by the U.S. population as of June 27, 2021 (332,463,206). These population estimates were found at the Census Bureau's population clock. *See* U.S. Census Bureau, *U.S. and World Population Clock,* available at *https://www.census.gov/popclock/.*

[230] *See* FDIC, *Details and Financials—Institution Directory,* available at *https://www7.fdic.gov/idasp/advSearchLanding.asp.*

[231] *See* 85 FR 57129.

[232] Data available at FINDRs.

the Federal Reserve, as of the fourth quarter of 2020 there are 3,638 bank holding companies and 11 savings and loan holding companies (7 insurance and 4 commercial).[233] This totals 3,649.

6. *Money transmitting businesses:* According to the FinCEN Money Services Business (MSB) Registrant Search Page, there are 24,124 registered MSBs as of October 15, 2021.[234] Please note this count includes MSBs that are registered for activity including, but not limited to, money transmission. This count does not include MSB agents that would not be within the scope of the exemption since they are not registered with FinCEN.

7. *Brokers or dealers in securities:* According to the SEC, the number of broker-dealers as of the end of the first quarter of 2021 is 3,532.

8. *Securities exchanges and clearing agencies:* The SEC provided the following estimates of exchanges and clearing agencies in August 2021: 24 national securities exchanges and 14 clearing agencies, which includes Proposed Rule Change Filings and Advance Notice Filings, totaling 38.

9. *Other Exchange Act registered entities:* The SEC provided the following estimates of other 1934 Act entities in August 2021: Two securities information processors, the Consolidated Quotation System and the Unlisted Trading Privileges (competing consolidators are not yet required to be registered, but the transition period and compliance dates begin this year); one national securities association, FINRA; 525 municipal advisors (FinCEN did not include in this count 21 banks that are municipal securities dealers due to the bank exemption estimated above); nine nationally recognized statistical rating organizations; two security-based swap repositories; three OTC derivatives dealers; and 373 registered transfer agents as of mid-2018. Totaling these estimates, 2 + 1 + 525 + 9 + 2 + 3 + 373 = 915. SEC also noted that security-based swap dealers and execution facilities would be included in this exemption in the future, but registration is not yet required.[235]

10. *Investment companies or investment advisers:* According to information provided by the SEC, there are 2,773 registered investment companies (number of trusts, not funds) and 14,381 registered investment advisers as of June 30, 2021. This totals 17,154.

11. *Venture capital fund advisers:* According to information provided by the SEC, there are 1,498 exempt reporting advisers utilizing the exemption from registration as an adviser solely to one or more venture capital funds as of June 30, 2021.

12. *Insurance companies:* According to the Treasury Department's Federal Insurance Office, there are 4,738 insurance companies, which include the following U.S. insurance underwriting entities by type: 3,471 members of an insurance group; 1,103 standalone; and 164 alien surplus lines. These totals were aggregated using a best efforts scrubbing approach applied to a S&P Global regulatory filings dataset on July, 2, 2021 and, for that reason, should be regarded as estimates or broadly indicative of the sector.

13. *State licensed insurance producers:* According to the National Association of Insurance Commissioners' website, as of January 26, 2021 there were more than 236,000 business entities licensed to provide insurance services in the United States.[236]

14. *Commodity Exchange Act registered entities:* The Commodity Futures Trading Commission (CFTC) provided the following breakdown of companies related to this exemption as of July 2021. For part I: Designated Contract Market (16); Swap Execution Facility (20); Designated Clearing Organization (15); and Swap Data Repository, Provisionally-registered (3)—totaling 54. For part II: Futures Commission Merchant (61); Introducing Broker in Commodities (1,055); Commodity Pool Operators (1,266); Commodity Trading Advisory (1,757); Retail Foreign Exchange Dealer (4); Swap Dealer, Provisionally-registered (109); and Major Swap Participant (0)—totaling 4,252. These totals combined equal 4,306.

15. *Accounting firms:* FinCEN searched the Public Company Accounting Oversight Board's (PCAOB) Registered Firms list, accessible on their website, and identified 851 firms as of October 20, 2021.[237] FinCEN searched for firms in the United States, Northern Mariana Islands, and Puerto Rico and totaled those with the status of ''Currently Registered'' or ''Withdrawal Pending.''

16. *Public utilities:* FinCEN relies upon the U.S. Census Bureau's 2018 Statistics of U.S. Businesses (SUSB) data for this estimate. FinCEN accessed the publicly available 2018 SUSB annual data tables by establishment industry and the ''U.S. & states, 6-digit NAICS'' Excel file. The Excel file lists the total firms in the United States with the NAICS code of 22: Utilities as 6,028.[238] SUSB data only includes entities that reported employees in the reporting year. FinCEN understands that firms may operate in multiple NAICS code industries; therefore this number could include firms that partly operate as utilities and partly as other types of exempt entities. Additionally, each ''firm'' in Census data may include multiple entities. FinCEN scaled this estimate to 6,100.17.[239]

17. *Financial market utilities:* According to the designated financial market utilities listed on the Federal Reserve's website, there are eight such entities.[240] While the website has not been updated since January 29, 2015, FinCEN understands this estimate is still applicable.

18. *Pooled investment vehicles:* According to information provided by SEC, as of June 30, 2021 there were 114,765 pooled investment vehicle clients reported by registered investment advisers. Of these, 5,671 are registered with a foreign financial regulatory authority. FinCEN subtracted these for a total of 109,094.[241]

19. *Tax-exempt entities:* FinCEN relies upon IACA survey data, which requested specific counts of nonprofits. FinCEN used the same per capita methodology described with respect to the IACA survey numbers above to identify an estimate of total nonprofits. FinCEN identified the total number of nonprofit corporations reported by each

[233] Federal Reserve Board of Governors, *Supervision and Regulation Report* (April 2021), p. 33, available at *https://www.federalreserve.gov/publications/files/202104-supervision-and-regulation-report.pdf.*

[234] *See* FinCEN MSB Registrant search page, accessed from *https://www.fincen.gov/msb-registrant-search.*

[235] SEC also provided data regarding its general exemption authority pursuant to Section 36 of the 1934 Act: Maybe 30 entities have been granted exemptions from registration over the years, and many were temporary, and maybe 300 entities did not have to register due to exemptions from defined terms granted under this authority. However, these are rough estimates, and given their relatively small value, FinCEN is not including them in the estimate of this exemption.

[236] NAIC, *Producer Licensing,* (January 26, 2021), available at *https://content.naic.org/cipr_topics/topic_producer_licensing.htm.*

[237] *See* PCAOB, *Registration, Annual and Special Reporting,* available at *https://rasr.pcaobus.org/Search/Search.aspx.*

[238] *See* U.S. Census Bureau, *U.S. & states, 6-digit NAICS,* (2018), available at *https://www.census.gov/data/tables/2018/econ/susb/2018-susb-annual.html.*

[239] This was calculated by multiplying the estimate by a ''2018 scaling factor'' of 1.011972411.

[240] Federal Reserve Board of Governors, *Designated Financial Market Utilities,* (January 29, 2015), available at *https://www.federalreserve.gov/paymentsystems/designated_fmu_about.htm.*

[241] This estimate may not account for foreign pooled investment vehicles advised by banks, credit unions, or broker-dealers. FinCEN requests any available information on estimates of pooled investment vehicles advised by such entities.

state that responded to the 2018 IACA survey, and then calculated a per capita rate for each state by dividing the number of nonprofit corporations by state population. FinCEN then calculated a weighted average per capita, and multiplied this average by the U.S. population in 2021 to obtain an estimate of the number of nonprofits in the U.S. This estimate is 2,826,260.79.

20. *Entities assisting a tax-exempt entity:* FinCEN could not find an estimate for these entities, and a comment to the ANPRM suggested that the public is also not aware of a possible estimate; therefore, to calculate this estimate, FinCEN assumes that approximately a quarter of the entities in the preceding exemption would have a related entity that falls under this exemption, totaling 706,565.20.[242] FinCEN welcomes comments on this assumption.

21. *Large operating companies:* This estimate is based on tax information. There were approximately 231,000 employers' tax filings in 2019 that reported more than 20 employees and receipts over $5 million.[243] FinCEN scaled this number to 232,564.47.[244]

22. *Subsidiaries of certain exempt entities:* According to a commercial database provider, as of 2021 there were 239,892 businesses in the United States that were majority-owned subsidiaries, either with a parent company inside or outside of the United States. While this estimate is not refined further to consider only wholly-owned subsidiaries of certain exempt entities, FinCEN is still providing this estimate for a point of reference.

23. *Inactive entities:* FinCEN is not proposing an estimate for this exemption given lack of available data. FinCEN also assumes that inactive companies are not included in the estimates from the IACA annual reports survey,[245] so there is no need to subtract this exemption from the prior estimate. However, there are likely to be some companies on corporate registries in the United States that fall under this exemption; such companies that were included in the 2018 IACA survey responses would impact FinCEN's estimates by increasing the total number of reporting companies. FinCEN solicits comments on an estimate of these companies, and whether FinCEN's assumption that inactive companies are not included in the numbers estimated herein is accurate.

After identifying these estimates, FinCEN further considered whether each of the entities described in the exemptions: (1) Meet the proposed definition of ''reporting company''; and (2) is included in the IACA annual reports survey estimates. FinCEN understands that some of the exempt categories may not register with the secretaries of state or similar offices in certain jurisdictions. For example, banks, credit unions, and insurance companies may only be required to register with the state regulator and not with the secretaries of state in certain jurisdictions.[246] Additionally, governmental authorities are more likely to be chartered directly by a legislative body rather than formed by registration with a secretary of state. Because of this, FinCEN assesses that these entities are not included in the IACA annual reports survey estimates, and therefore do not need to be subtracted from the total companies' estimate. As previously noted, FinCEN also assumes that inactive companies are *generally* not included in the IACA annual reports survey estimates, and that in response to this survey, states provided counts of entities ''in good standing or active.''

FinCEN also considered whether the exemption categories were likely to overlap, and therefore include counts of the same entities that would result in a duplicative subtraction. For example: A variety of entities, such as public utilities, SEC reporting issuers, and brokers/dealers in securities, could be large operating companies with more than 20 employees and $5 million in gross receipts/sales; certain subsidiaries of exempt entities may themselves be exempt entities; or specific exemptions may overlap, such as insurance companies and state-licensed insurance producers. Another scenario could be that the exemption estimates include entities that are not in the IACA annual reports survey (such as a bank that is a large operating company with more than 20 employees and $5 million in gross receipts/sales), resulting in an unnecessary subtraction.

Estimating the precise number of overlap for each of these possibilities and other potential overlaps is difficult due to lack of data. Critically, however, FinCEN assumes that any overlap would have a relatively minor effect on the burden estimate as a whole. With that in mind, FinCEN has not attempted to estimate each category of overlap.[247] However, FinCEN welcomes comment on any material inaccuracies that not estimating these overlaps more precisely may cause, and suggestions for mitigation.

Table 2 contains a list of exemptions and the estimates to be subtracted from the total number of reporting companies estimated based on IACA data.

[242] 2,826,260.79 X 0.25.

[243] The gross receipts include all receipts from activities conducted directly by the entity, including foreign sales to the extent that the entity has a branch in a foreign country. However, it would not include, for example, the gross receipts earned by a foreign subsidiary of the entity.

[244] This was calculated by multiplying the estimate by a ''2019 scaling factor'' of 1.006772611.

[245] IACA's 2017 survey specified in its questions that entities be in good standing or active. FinCEN assesses that this same expectation applies to the 2018 survey, but recognizes that does not mean no such companies were included.

[246] For example, Indiana's Secretary of State's website notes that its forms are not for use by insurance corporations or financial institutions, and that the appropriate state agency (Department of Insurance or Department of Financial Institutions) should be contacted for filings instructions. *See* Indiana Secretary of State, *Business Forms,* available at *https://www.in.gov/sos/business/division-forms/business-forms/.*

[247] FinCEN considered whether it may be able to address the overlap between the large operating company exemption and the public utility exemption that was calculated using SUSB data. Because the SUSB data may be filtered by employee size, FinCEN could remove from the estimate the number of entities with greater than 20 employees. However, this estimate would be imprecise given that SUSB data does not consider the threshold of $5 million gross receipts/sales.

TABLE 2—EXEMPTION ESTIMATES TO BE SUBTRACTED

Exemption No.	Exemption description	Final estimate [248]
1	SEC reporting issuers	4,294.89
5	Depository institution holding companies	3,649
6	Money transmitting businesses	24,124
7	Brokers or dealers in securities	3,532
8	Securities exchanges and clearing agencies	38
9	Other Exchange Act registered entities	915
10	Investment companies or investment advisers	17,154
11	Venture capital fund advisers	1,498
13	State-licensed insurance producers	236,000
14	Commodity Exchange Act registered entities	4,306
15	Accounting firms	851
16	Public utilities	6,100.17
17	Financial market utilities	8
18	Pooled investment vehicle	109,094
19	Tax-exempt entities	2,826,260.79
20	Entities assisting a tax-exempt entity	706,565.20
21	Large operating companies	232,564.47
22	Subsidiaries of certain exempt entities	239,892

Given this analysis, FinCEN estimates that the total number of exempt entities is approximately 4,416,847. Subtracting this number from the first estimate of entities that could be reporting companies, FinCEN estimates that there are 25,873,739 entities that would meet the definition of a reporting company with exemptions considered. To estimate new exempt companies annually, FinCEN multiplied the estimate of total exempt companies, 4,416,847, by the overall ratio of new entities to total entities from the per capita calculations based on IACA data (3,771,993.58/30,247,071.10). The resulting estimate of new exempt entities is approximately 550,807.7. Therefore, FinCEN estimates that there would be 3,226,613 new entities per year that meet the definition of reporting company with exemptions considered. FinCEN welcomes comment on whether the method it has used to estimate the number of new entities that are eligible for an exemption from the definition of reporting company—that is, by assuming that number would be proportionate to the share of existing entities that are eligible for an exemption—is sound.

FinCEN assumes that each reporting company would make one initial BOI report; FinCEN does not separately calculate the burden of the need to issue a corrected report where mistaken information was initially reported, but that can be considered as part of the estimate of the cost per initial report. Given the proposed implementation period of one year to comply with the rule for entities that were formed or registered prior to the effective date of the final rule, FinCEN assumes that all of the entities that meet the definition of reporting company would submit their initial BOI reports in Year 1, totaling 25,873,739 reports. While new reporting companies may be created during this year as well, FinCEN assumes that companies are created and dissolved at roughly the same rate; therefore, FinCEN assumes as many new companies would file as old companies would dissolve and not file within the first year. In Year 2 and beyond, FinCEN estimates that the number of initial BOI reports would be 3,226,613, which is the same estimate as the number of new entities per year that meet the definition of reporting company.

c. Number of BOI Updated Reports

FinCEN considered multiple data sources in order to estimate the number of BOI reports that may be updated on an annual basis. These updates would require additional burden and cost to filers. FinCEN first considered whether it may be able to apply data from the District of Columbia (DC), which recently imposed beneficial ownership reporting requirements in January 2020 on owners with more than 10 percent ownership and certain control persons.[249] FinCEN received information from the DC Department of Consumer and Regulatory Affairs (DCRA) during outreach related to the NPRM regarding the number of updates to this reporting. DCRA reported that since the effective date of their beneficial ownership requirement, there have been 24,865 new entity filings and 69,019 biennial reports from existing entities received. There were 567 amendments filed by the new entities in this timeframe, approximately 2 percent, and approximately 55,200 biennial corrections filed, about 80 percent. FinCEN understands that the biennial corrections could account for existing entities that are reporting their beneficial ownership for the first time since the effective date, rather than solely counting updates or corrections to previously reported information. Thus, given the differences in how DC defines ''beneficial owner'' and uncertainties as to whether the data on biennial reports reflects updated or initial reports, FinCEN reviewed other sources in order to estimate BOI updated reports.

[248] This table includes the ''scaled for 2021'' estimate for those with historical data sources.

[249] The Background section in this preamble includes more information on DC's requirements. *See* DC Code sec. 29–102.01.

FinCEN considered likely triggers for updated reports and the likelihood of these events, in order to estimate the number of updates. FinCEN assessed that the most likely causes for updates to reporting companies' initial reports are: (1) Change in address of a beneficial owner or applicant; (2) death of a beneficial owner; or (3) a management decision resulting in a change in beneficial owner.[250] In order to estimate the likelihood of these updates on a monthly basis, given that the proposed rule requires updates within 30 days, FinCEN approximated probabilities for these causes from other sources:

1. Change in address: According to the Census Bureau's Geographic Mobility data, 29,780,000 people one year or older moved from 2019–2020.[251] This is approximately 8.9824695 percent of the 2020 U.S. population.[252] Therefore, FinCEN assesses that 8.9824695 percent of beneficial owners may have a change in address within a year, resulting in an updated BOI report.

2. Death: FinCEN utilized data published in the Social Security Administration's 2019 Period Life Table to estimate this probability.[253] FinCEN narrowed the range of ages to 30–90 and calculated the median probability of death for males (0.011447) and females (0.00688). FinCEN then averaged these numbers, resulting in a 0.9164 percent probability of death within a year.

3. Management decision: Changes to beneficial ownership due to management decisions could encompass items such as a sale of an ownership interest or a change in substantial control (the removal, change, or addition of a beneficial owner with substantial control). FinCEN is not aware of a current data source that could accurately estimate such updates to BOI, though FinCEN invites comment on an appropriate way to estimate these numbers. FinCEN is assuming that 10 percent of beneficial owners may change within a year due to management decisions.

Totaling these estimated probabilities, there is an approximately 20 percent probability of a change for a given beneficial owner resulting in an updated BOI filing within a year.[254] FinCEN divided this by 12 to find the monthly probability of an update: 1.6582 percent.

Given that each BOI report may contain multiple beneficial owners, each of which could contribute to a change resulting in an updated report, FinCEN reviewed data published by the UK in a 2019 study on their BOI reporting requirements.[255] The UK requirements define beneficial owners (People with Significant Control, or PSC) as those that directly or indirectly hold more than 25 percent of shares or voting rights in a company, has the right to appoint or remove the majority of the board of directors, or otherwise exercises significant influence or control.[256] The UK study reported the following distribution of the number of reported beneficial owners per report: 0 (8 percent of reports); 1 (43 percent); 2 (37 percent); 3 (9 percent); 4 (2 percent); 5 to 10 (2 percent); and don't know (1 percent).[257]

In order to use this distribution for its estimation purposes, FinCEN is modifying the percentage of reports with one beneficial owner to 50 percent. This is to account for the fact that the beneficial ownership requirements proposed herein would not include an option for zero reported beneficial owners. Increasing the estimate of the percentage of reports with one beneficial owner is reasonable because FinCEN assumes that many of the reporting companies would be small businesses with simple ownership structures.[258] FinCEN is adding 7 percent to the distribution for one beneficial owner rather than 9 percent (the total of the 0 beneficial owners and ''don't know'' responses in the UK's study) in order to ensure that the distribution totals 1. Additionally, FinCEN averaged 5, 6, 7, 8, 9, 10 to calculate 7.5 beneficial owners for the distribution category labeled in the UK study as ''5 to 10'' beneficial owners, although this is likely a high estimate of the true number in the UK data given the otherwise left-skewed nature of the distribution based on the available data. Please see the following table:

TABLE 3—ESTIMATED DISTRIBUTION OF BENEFICIAL OWNERS PER REPORT

Number of beneficial owners per report	Estimated distribution
1	0.50
2	0.37
3	0.09
4	0.02
7.5	0.02

[250] There may be other causes for updating BOI reports, such as change of beneficial owner or applicant name, expiration of the provided identification number document, or change in the identifying information for the reporting company, such as address or name/DBA. However, FinCEN assesses that these changes would occur at a relatively minor rate compared to the reasons described above. In particular, FinCEN understands that a renewed driver's license is likely to have the same identification number as the previously submitted expired document, and therefore is less likely to require an updated report. FinCEN welcomes comments that address whether there are, and if so which, states that do not follow this convention. FinCEN also assumes that reports notifying FinCEN that a reporting company has become eligible for an exemption from the reporting requirement would be negligible burden and has not separately estimated it.

[251] *See* U.S. Census Bureau, *Table 1. General Mobility, by Race and Hispanic Origin and Region, and by Sex, Age, Relationship to Householder, Educational Attainment, Marital Status, Nativity, Tenure, and Poverty Status: 2019 to 2020—United States,* available at *https://www.census.gov/data/tables/2020/demo/geographic-mobility/cps-2020.html.* The total movers, in thousands, is 29,780.

[252] The U.S. population on July 1, 2020 was 331,534,662 according to the Census Bureau. *See* U.S. Census Bureau, *U.S. and World Population Clock,* available at *https://www.census.gov/popclock/.* The percentage was calculated by: (29,780,000/331,534,662) × 100 = 8.9824695.

[253] *See* Social Security Administration, Actuarial Life Table, *Period Life Table, 2019,* available at *https://www.ssa.gov/oact/STATS/table4c6.html.*

[254] As a point of comparison, the UK found that 10 percent of businesses reported a change in beneficial ownership information following an initial report. United Kingdom Department for Business, Energy & Industrial Strategy, *Review of the Implementation of the PSC Register,* (March 2019), *p. 16,* available at *https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/822823/review-implementation-psc-register.pdf.*

[255] The UK study used a ''mixed-method'' research approach, which consisted of a quantitative survey with 500 businesses and in-depth qualitative interviews with 30 stakeholder organizations and 2 members of staff from Companies House. United Kingdom Department for Business, Energy & Industrial Strategy, *Review of the implementation of the PSC Register,* (March 2019), p. 4, available at *https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/822823/review-implementation-psc-register.pdf.*

[256] *Id.,* p. 8.

[257] *Id.,* p. 14.

[258] For purposes of the IRFA above, FinCEN assumes that all reporting companies will be small entities. However, there may be reporting companies that are small, but have complex ownership structures. Therefore, FinCEN assumes here that ''many'' reporting companies will be small with a simple ownership structure.

FinCEN calculated the number of updated reports using the following general approach. FinCEN assumed that 1/12 of the initial reports that must be filed by reporting companies in existence on the effective date of the proposed rule would be filed in each month of the one year implementation period. The first month of implementation is assumed to have zero updated reports. To estimate the number of updated reports in the second month of implementation, FinCEN multiplied the estimated distribution by (1/12) of the estimated initial reports within the first year, which is the estimated distribution of initial report filings in the first month with varying levels of beneficial owners reported. FinCEN then multiplied each element of the distribution by $1-(1-0.016582)\wedge N$, where N is the number of beneficial owners on the respective line of the distribution; this is the probability that a given company with N beneficial owners would experience a change in at least one beneficial owner's reportable information in each month.[259] This assumes that changes for a beneficial owner would be independent from changes for other beneficial owners of the same company. The following table provides the estimated number of updated reports for the second month of implementation using the described methodology:

TABLE 4—ESTIMATED NUMBER OF BENEFICIAL OWNERSHIP UPDATED REPORTS IN YEAR 1, MONTH 2

Number of beneficial owners per report	Estimated distribution	Estimated number of updated reports
1	0.50	[260] 17,877
2	0.37	[261] 26,239
3	0.09	[262] 9,494
4	0.02	[263] 2,790
7.5	0.02	[264] 5,083
Total		61,483

FinCEN replicated this analysis for each remaining month of the first year. The estimated initial reports monthly increase was captured by increasing the (1/12) ratio in the above equation. Therefore, the equations in the prior table remained the same per month with the following change to (1/12): 2/12 (Month 3); 3/12 (Month 4); 4/12 (Month 5); 5/12 (Month 6); 6/12 (Month 7); 7/12 (Month 8); 8/12 (Month 9); 9/12 (Month 10); 10/12 (Month 11); and 11/12 (Month 12). The total of all monthly estimates for Year 1 calculated in this fashion is 4,057,848 updated reports. Estimated monthly updated reports for all subsequent months were calculated using the same equation, but with a 12/12 ratio of initial reports (all initial reports). This estimate is approximately 737,790.50, multiplied by 12 for an annual estimate of 8,853,486 updated reports.

FinCEN conducted similar analysis to estimate the number of updates to applicant information on a monthly basis.[265] FinCEN assessed that the most likely causes for updates to reporting companies' initial reports involving an applicant is a change in address. Given data referenced above, there is an 8.9824695 percent probability of a change in address in a year, with a monthly probability of 0.0074854. FinCEN assumes that a probable distribution of the number of applicants per report is 90 percent with one applicant and 10 percent with two applicants. Using this probability and distribution, FinCEN calculated the monthly number of updates related to an applicant by using the same calculation as beneficial owner updated reports.

TABLE 5—ESTIMATED NUMBER OF APPLICANT UPDATED REPORTS IN YEAR 1, MONTH 2

Number of applicants per report	Estimated distribution	Estimated number of updated reports
1	0.90	[266] 14,526
2	0.10	[267] 3,216
Total		17,742

The total of all monthly estimates for Year 1 calculated in this fashion is 1,170,937 updated reports. Estimated monthly updated reports for all subsequent months were calculated using the same equation, but with a 12/12 ratio of initial reports (all initial reports). This estimate is approximately 212,897.60 multiplied by 12 for an annual estimate of 2,554,771 updated reports. Combining the estimates of beneficial ownership and applicant updates, FinCEN estimates 5,228,785 updated reports in Year 1 and 11,408,257 updated reports in Year 2 and beyond. FinCEN welcomes comments on the appropriateness of this analysis for calculating the total required number of updated reports.

[259] Assuming that the probability of change in a given period for a single beneficial owner is p, then the probability of no change of a single beneficial owner is $(1-p)$. The probability of a company with one beneficial owner having a change is therefore $1-(1-p)$. The probability of a company with two beneficial owners having a change is $1-(1-p)\wedge 2$, etc.

d. Estimated PRA Burden of BOI Reports

Reporting Requirements: The proposed rule would require certain entities to report to FinCEN information about the reporting company, their beneficial owners and company applicants, in accordance with the CTA.[268] Entities would also be required to update the information in these reports as needed. The collected information would be maintained by FinCEN in a database accessible to authorized users.

OMB Control Number: 1506–XXXX..

Frequency: As required.[269]

Description of Affected Public: Domestic entities that are corporations, limited liability companies, or other entities that are 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 or foreign entities that are corporations, limited liability companies, or other entities which are: (1) Formed under the law of a foreign country; and (2) 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 laws of a state or Indian Tribe. The proposed regulation does not require corporations, limited liability companies, or other entities that are described in any of 23 specific exemptions from the general definition to file BOI reports.

Estimated Number of Respondents: As explained in detail above, the number of entities that are reporting companies is difficult to estimate. FinCEN assumes that existing entities that meet the definition of reporting company and are not exempt would submit their initial BOI reports in Year 1. Therefore, the estimated number of initial BOI reports in Year 1 is 25,873,739. In Year 2 and beyond, FinCEN estimates that the number of initial BOI reports would be 3,226,613, which is the same estimate as the number of new entities per year that meet the definition of reporting company and are not exempt. FinCEN estimates that 5,228,785 updated reports would be filed in Year 1, and 11,408,257 such reports would be filed in Year 2 and beyond.

Estimated Time per Respondent: Most of the information required to be reported to FinCEN is basic information that reporting companies would have access to as part of conducting their business. FinCEN estimates the average burden of the reporting BOI as 70 minutes per response (20 minutes to read the form and understand the requirement, 30 minutes to identify and collect information about beneficial owners and applicants, 20 minutes to fill out and file the report, including attaching a scanned copy of an acceptable identification document for each beneficial owner and applicant). FinCEN estimates the average burden of updating such reports as 30 minutes per update (20 minutes to identify and collect information about beneficial owners or applicants and 10 minutes to fill out and file the update).

Estimated Total Reporting Burden Hours: FinCEN estimates that during Year 1, the filing of initial BOI reports would result in approximately 30,186,029 burden hours per year on reporting companies.[270] In Year 2 and beyond, FinCEN estimates that the filing of initial BOI reports would result in 3,764,381 burden hours annually on new reporting companies.[271] FinCEN estimates that filing BOI updated reports in Year 1 would result in approximately 2,614,392 burden hours on reporting companies.[272] In Year 2 and beyond, the estimated number of burden hours is 5,704,129.[273]

Estimated Total Reporting Cost: To estimate the average cost, FinCEN used the estimate of an average cost of $27.07 per hour, the mean hourly wage for all employees[274] from the May 2020 National Occupational Employment and Wage Estimates report[275] and multiplied by a private industry benefits factor of 1.42[276] to estimate a fully loaded wage rate of $38.44 per hour. The estimated cost of filing initial BOI reports in Year 1 is $1,160,332,854.17 per year.[277] The estimated cost of filing initial BOI reports annually in Year 2 and beyond is $144,700,558.43.[278] The estimated cost of filing updated reports in Years 1 is $100,495,669.61 per year.[279] The estimated cost of filing updated reports annually in Year 2 and beyond is $219,263,279.14.[280] FinCEN estimates that it will cost each reporting company approximately $45 to prepare and submit an initial report for the first year that the BOI reporting requirements are in effect.[281]

ii. Individuals Applying for a FinCEN Identifier

Reporting Requirements: The proposed rule would require the collection of information from individuals in order to issue them a FinCEN identifier.[282] This is a voluntary collection. Per the CTA, individuals are required to provide their full name, date of birth, current street address, a unique identifying number from an acceptable identification document; furthermore, consistent with the CTA, FinCEN is proposing to require individuals to provide a scanned image of that document in order to receive a FinCEN identifier.[283] An individual is also required to submit updates of their identifying information as needed. FinCEN would store such information in its BOI database for access by authorized users.

OMB Control Number: 1506–XXXX

Frequency: As required.

Description of Affected Public: In terms of estimating the number of individuals requesting a FinCEN identifier, FinCEN acknowledges that anyone with an acceptable identification document could apply for a FinCEN identifier under the proposed rule. However, the primary incentives

[268] *See* 31 U.S.C. 5336(b) and proposed 31 CFR 1010.380(b).

[269] For BOI reports, there is an initial filing and subsequent filings are required as information changes.

[270] (25,873,739 × 70)/60.

[271] (3,226,613 × 70)/60. While this calculation equals 3,764,382, FinCEN's model includes decimal points that result in the total of 3,764,381.

[272] (5,228,785 × 30)/60.

[273] (11,408,257 × 30)/60.

[274] FinCEN's selection of the ''all employees'' estimate is reflective of its goal to develop the BOI reporting requirement so that a range of businesses' ordinary employees, with no specialized knowledge or training, may file the reports. Additionally, the CDD Rule also used the weighted average hourly wage for all employees from the National Occupational Employment and Wage Estimates report to estimate client costs in opening a new account. 81 FR 29437.

[275] *See* U.S. Bureau of Labor Statistics, *National Occupational Employment and Wage Estimates,* (May 2020), available at *https://www.bls.gov/oes/current/oes_nat.htm.*

[276] The ratio between benefits and wages for private industry workers is $10.83 (hourly benefits)/$25.80 (hourly wages) = 0.42. The benefit factor is 1 plus the benefit/wages ratio, or 1.42. *See* U.S. Bureau of Labor Statistics, *Table 4. Employer Costs for Employee Compensation for private industry workers by occupational and industry group,* (March 2021), available at *https://www.bls.gov/news.release/ecec.t04.htm.*

[277] 30,186,029 × $38.44. While this calculation equals $1,160,350,954.76, FinCEN's model includes decimal points that result in the total of $1,160,332,854.17.

[278] 3,764,381 × $38.44. While this calculation equals $144,702,805.64, FinCEN's model includes decimal points that result in the total of $144,700,558.43.

[279] 2,614,392 × $38.44. While this calculation equals $101,535,108.48, FinCEN's model includes decimal points that result in the total of $100,495,669.61.

[280] 5,704,129 × $38.44. While this calculation equals $219,266,718.76, FinCEN's model includes decimal points that result in the total of $219,263,279.14.

[281] $1,160,332,854.17/25,873,739 = $44.85, approximately $45.

[282] FinCEN is not separately calculating a cost estimate for entities requesting a FinCEN identifier, because FinCEN assumes this would be part of the process and cost already estimated in submitting the BOI reports.

[283] 31 U.S.C. 5336(b)(3)(A)(i) and proposed 31 CFR 1010.380(b)(5).

for individual beneficial owners to apply for a FinCEN identifier are likely data security (an individual may desire not to send personal information to a reporting company but rather prefer to file that data with FinCEN directly); administrative efficiency where an individual is likely to be identified as a beneficial owner of numerous reporting companies; and anonymity from reporting companies that are not directly owned, but are indirectly owned through another entity, by the individual. FinCEN assesses that there may be less incentive for individuals who only directly own reporting companies to obtain FinCEN identifiers because their identity is already known to the reporting company. Company applicants that are responsible for registering many reporting companies may have incentive to request a FinCEN identifier in order to limit the number of companies with access to their personal information. This reasoning assumes that there is a one-to-many relationship between the company applicant and reporting companies.

Estimated Number of Respondents: Given the cases described above, which are based on FinCEN's speculation of possible incentives for individuals to obtain a FinCEN identifier, FinCEN estimates the number of individuals that would apply for a FinCEN identifier may be relatively low. FinCEN is estimating that number to be approximately 1 percent of the reporting company estimates above. FinCEN assumes that, similar to reporting companies' initial filings, there would be an initial influx of applications for a FinCEN identifier (primarily by those beneficial owners with complex corporate structures) that would then decrease to a smaller annual rate of requests. Therefore, FinCEN estimates that 258,737 individuals would apply for a FinCEN identifier during Year 1 [284] and 32,266 individuals would apply for on a FinCEN identifier annually moving forward.[285] To estimate the number of updated reports for individuals' FinCEN identifier information per year, FinCEN used the same methodology explained in the BOI report estimate section to calculate, and then total, monthly updates. However, FinCEN only applied the monthly probability of 0.0074854 (8.9824695 percent, the annual likelihood of a change in address, divided by 12 to find a monthly rate), as this was the sole probability of those previously estimated that would result in a change to individual identifying information.[286] This analysis estimated 10,652 updates in Year 1 and 23,241 in Year 2 and beyond.

Estimated Time per Respondent: FinCEN anticipates that initial FinCEN identifier applications would require approximately 20 minutes (10 minutes to read the form and understand the information required and 10 minutes to fill out and file the request, including attaching a scanned copy of an acceptable identification document), given that the information to be submitted to FinCEN would be readily available to the person requesting the FinCEN identifier. FinCEN estimates that updates would require 10 minutes (10 minutes to fill out and file the update).

Estimated Total Reporting Burden Hours: FinCEN estimates the total burden hours of individuals initially applying for a FinCEN identifier during Year 1 to be 86,246.[287] In years after this period, FinCEN estimates that individuals applying for a FinCEN identifier would result in 10,755 burden hours annually.[288] FinCEN estimates that the burden hours of individuals updating FinCEN identifier related information would be 1,775 in Year 1 [289] and 3,874 in Year 2 and beyond.[290]

Estimated Total Reporting Cost: To estimate the average cost, FinCEN used the May 2020 fully loaded wage rate of $38.44 per hour for all employees. FinCEN estimates the total cost of individuals initially applying for a FinCEN identifier during Year 1 to be $3,315,236.73.[291] In Year 2 and beyond, FinCEN estimates that individuals initially applying for a FinCEN identifier would result in an annual cost of $413,430.17.[292] FinCEN estimates that the cost of updating individual FinCEN identifier information would be $68,243.57 in Year 1 [293] and $148,895.06 in Year 2 and beyond.[294]

iii. Foreign Pooled Investment Vehicle Reports

Reporting Requirements: The proposed rule requires that any entity that would be a reporting company but for the pooled investment vehicle exemption and is formed under the laws of a foreign country shall file with FinCEN a written certification that provides identification information of an individual that exercises substantial control over the pooled investment vehicle. This requirement is being implemented in accordance with the CTA.[295] FinCEN would maintain this information in its BOI database for access by authorized users.

OMB Control Number: 1506–XXXX.

Frequency: As required.

Description of Affected Public: Any entity that would be a reporting company but for the pooled investment vehicle exemption [296] and is formed under the laws of a foreign country.

[284] Assuming that individuals applying for FinCEN identifiers would generally request the identifier around the time when the company files its initial BOI report, one percent of the estimated initial BOI reports in Year 1 (25,873,739) is 258,737.

[285] One percent of the estimated new reporting companies annually (3,226,613) is 32,266.

[286] FinCEN understands that other circumstances may cause an update to be submitted for an individual's identifying information linked to a FinCEN identifier, but is using this probability as a rough estimate.

[287] (258,737 × 20)/60.

[288] (32,266 × 20)/60.

[289] (10,652 × 10)/60.

[290] (23,241 × 10)/60.

[291] 86,246 × $38.44. While this calculation equals $3,315,296.24, FinCEN's model includes decimal points that result in the total of $3,315,236.73.

[292] 10,755 × $38.44. While this calculation equals $413,422.20, FinCEN's model includes decimal points that result in the total of $413,430.17.

[293] 1,775 × $38.44. While this calculation equals $68,231.00, FinCEN's model includes decimal points that result in the total of $68,243.57.

[294] 3,874 × $38.44. While this calculation equals $148,916.56, FinCEN's model includes decimal points that result in the total of $148,895.06.

[295] 31 U.S.C. 5336(b)(2)(C) and proposed 31 CFR 1010.380(b)(3)(iii).

[296] This applies to any pooled investment vehicle that is operated or advised by a person that is an exempt bank, credit union, broker or dealer, registered investment company or adviser, or venture capital fund adviser. A pooled investment vehicle is defined in the CTA as any investment company as defined in section 3(a) of the Investment Company Act of 1940 (15 U.S.C. 80a–(a)); or any company that 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; and is identified by its legal name by the applicable investment adviser in its Form ADV (or successor form) filed with the SEC. 31 U.S.C. 5336(a)(10).

Estimated Number of Respondents: Based on information provided by the SEC, FinCEN estimates that at least 8,884 entities would be obligated to make initial reports when the proposed rule would come into effect.[297] Assuming that these entities file initial reports in Year 1, the estimated number of initial reports in Year 1 is 8,884. In years after this period, FinCEN estimates that the number of entities required to file reports would be approximately 1,108.[298] To estimate the number of updated reports per year, FinCEN used the same methodology explained in the BOI report estimate section to calculate, and then total, monthly updates. However, FinCEN did not account for differing numbers of beneficial owners per report, given the requirement is to report one beneficial owner. This analysis estimated 810 updates in Year 1 and 1,768 in Year 2 and beyond.

Estimated Time per Respondent: The information required to be reported to FinCEN is basic information that reporting companies would have access to as part of conducting their business. In addition, this requirement is likely less costly than the prior BOI reporting requirement because it only requires the identification and reporting of one beneficial owner with substantial control (not ownership). Therefore, FinCEN estimates the burden of the reporting the report as 40 minutes per response (10 minutes to read the form and understand the requirement, 20 minutes to identify and collect information about beneficial owners, 10 minutes to fill out and file the report and attach a scanned copy of an acceptable identification document). FinCEN estimates the burden of updating or correcting such reports as 20 minutes per update (10 minutes to identify and collect information about beneficial owners and 10 minutes to fill out and file update).

Estimated Total Reporting Burden Hours: FinCEN estimates the total burden hours for Year 1 to be 5,923 hours.[299] After this period, FinCEN estimates the annual burden hours to be 739 hours.[300] FinCEN estimates that the burden hours of updating reports would be 270 in Year 1,[301] and 589 in Year 2 and beyond.[302]

Estimated Total Reporting Cost: To estimate the average cost, FinCEN used the May 2020 fully loaded wage rate of $38.44 per hour for all employees. The estimated total cost for initial reports in Year 1 is $227,663.75.[303] After this period, FinCEN estimates the annual cost to be $28,391.05.[304] FinCEN estimates that the cost of updating reports would be $10,381.80 in Year 1 [305] and $22,651.20 in Year 2 and beyond.[306]

iv. Total Burden and Cost

The following table totals the burden and cost estimated in the prior sections.

TABLE 6—TOTAL BURDEN AND COST

Information collection	Count of reports	Burden hours	Cost
Year 1			
Initial BOI reports	25,873,739	30,186,029	$1,160,332,854.17
Updates for BOI	5,228,785	2,614,392	[307] 100,495,669.61
Initial identifier applications	258,737	86,246	3,315,236.73
Updates for identifiers	10,652	1,775	68,243.57
Initial foreign pooled investment vehicle reports	8,884	5,923	227,663.75
Updates for foreign pooled investment vehicles	810	270	10,381.80
Totals	31,381,608	32,894,635	$1,264,450,049.62
Year 2 and Beyond			
Initial BOI reports	3,226,613	3,764,381	$144,700,558.43
Updates for BOI	11,408,257	5,704,129	[308] $219,263,279.14
Initial identifier applications	32,266	10,755	413,430.17
Updates for identifiers	23,241	3,874	148,895.06
Initial foreign pooled investment vehicle reports	1,108	739	28,391.05
Updates for foreign pooled investment vehicles	1,768	589	22,651.20
Totals	14,693,252	9,484,467	364,577,205.05

The following table shows a summary of total cost over ten years. FinCEN is selecting the time period of ten years, a relatively short time period given that the requirement is permanent. This is because FinCEN cannot predict how the burden and cost of compliance may change after it is widely adopted by reporting companies. Please note, there are no non-labor costs associated with this collection of information because FinCEN assumes that active businesses already have the necessary equipment and tools to comply with the proposed regulatory requirements.

TABLE 7—TOTAL COSTS OVER TEN YEARS

Year	Total cost
Year 1	$1,264,450,049.62
Year 2	364,577,205.05
Year 3	364,577,205.05
Year 4	364,577,205.05

[297] As of June 30, 2021, registered investment advisers reported 5,671 pooled investment vehicle clients registered with a foreign financial regulatory authority and venture capital fund advisers reported 3,213 advised private funds registered with a foreign financial regulatory authority. These two counts total 8,884. However, this estimate may not account for foreign pooled investment vehicles advised by banks, credit unions, or broker-dealers. FinCEN requests any available information on estimates of foreign pooled investment vehicles advised by such entities.

[298] FinCEN calculated the estimated foreign pooled investment vehicle filers per year (8,884) by the ratio of estimated new entities to total entities based on the IACA data analysis above (3,771,993.58/30,247,071.10).

[299] (8,884 × 40)/60.

[300] (1,108 × 40)/60.

[301] (810 × 20)/60.

[302] (1,768 × 20)/60.

[303] 5,923 × $38.44. While this calculation equals $227,680.12, FinCEN's model includes decimal points that result in the total of $227,663.75.

[304] 739 × $38.44. While this calculation equals $28,407.16, FinCEN's model includes decimal points that result in the total of $28,391.05.

[305] 270 × $38.44. While this calculation equals $10,378.80, FinCEN's model includes decimal points that result in the total of $10,381.80.

[306] 589 × $38.44. While this calculation equals $22,641.16, FinCEN's model includes decimal points that result in the total of $22,651.20.

TABLE 7—TOTAL COSTS OVER TEN YEARS—Continued

Year	Total cost
Year 5	364,577,205.05
Year 6	364,577,205.05
Year 7	364,577,205.05
Year 8	364,577,205.05
Year 9	364,577,205.05
Year 10	364,577,205.05

In addition, FinCEN calculated the net present value of cost for a 10-year horizon at discount rates of seven and three percent,[309] totaling approximately $3.4 billion and $3.98 billion, respectively (see Table 8 below for exact figures). FinCEN calculated the cost over a ten-year horizon to capture the immediate impact, but expects that from Year 2 onwards the annual aggregate costs would be the same in each subsequent year.

v. Alternative Scenario Analyses

FinCEN considered alternatives while shaping the specific reporting requirements of the rule, including: (1) The length of the initial reporting period; and (2) the length of time to file an updated report. The analyses of these alternatives rely upon the analysis used thus far in the PRA cost estimate. Each alternative is considered fully below.

In the first alternative, FinCEN considered whether to lengthen the timeframe in which initial reports may be submitted by companies that are in existence when the eventual final rule comes into effect. The CTA states that existing companies shall submit a BOI report to FinCEN ''in a timely manner, and not later than 2 years after the effective date of the regulations'' addressed by this proposed rule.[310] FinCEN currently proposes that existing companies submit a BOI report one year after the effective date, which is ''not later than 2 years''; however, given that the CTA permits FinCEN to select up to a two-year period for initial reports of companies that already exist when the final rule comes into effect, FinCEN compared the cost to the public for these two scenarios.

FinCEN assumed that if the reporting period was two years, half of the existing reporting companies would file their initial BOI report in Year 1 and the other half would file in Year 2. The same logic was applied to individuals applying for FinCEN identifiers and submitting foreign pooled investment vehicle reports: Half of the initial applications or reports would be filed in Year 1, and the other half in Year 2. FinCEN also assumed that updated reports would increase at an incremental rate throughout the two-year period, and therefore calculated the number of updated reports by extending the methodology described above to a 24-month timeframe (rather than a 12-month timeframe). This comparison shows that the cost of the rule is approximately $637 million less in Year 1 with this change, and approximately $358 million more in Year 2, but then is the same in following years. This also decreased the ten-year horizon net present value by approximately $281 million at a three percent discount rate or $283 million at a seven percent discount rate. However, the benefits of a one-year reporting period would outweigh the increase in cost during Year 1 of the rule. The public would bear the cost of initial report filings regardless and FinCEN has sought to maximize the usefulness of the database to law enforcement by obtaining BOI for existing entities as soon as possible.

In the second alternative, FinCEN considered whether to lengthen the timeframe for updated reports from 30 days to one year. The CTA states that updated reports shall be filed ''not later than 1 year after the date on which there is a change.'' [311] FinCEN currently proposes that updates be submitted 30 days after the change date, which is ''not later than 1 year''; however, given that the CTA permits FinCEN to select up to a one-year timeframe, FinCEN compared the cost to the public of these two scenarios. FinCEN assumed that permitting updates to be reported within one year would result in updates being ''bundled,'' meaning that a reporting company could submit one updated report to account for multiple updates, as opposed to reporting each update singularly as would likely be the case under the 30-day reporting requirement. FinCEN therefore assumed that there would be approximately half as many updated reports overall if the timeframe is lengthened to one year. FinCEN also assumed that because more information may be reported on a ''bundled'' report, the burden of filing an update would increase. FinCEN increased the estimated burden for an updated BOI report to be 50 minutes, rather than the 30 minutes estimate for 30-day updated reports.[312] FinCEN estimated that increasing the timeframe for updated reports results in a net present value cost decrease by approximately $238 million at a seven percent discount rate or $293 million at a three percent discount rate. However, the benefits of having information updated on a monthly basis, which would make the database current and accurate and by extension highly useful, outweigh these costs. As noted in Section IV above, allowing reporting companies to report updates on an annual basis could cause a significant degradation in accuracy and usefulness of the BOI. FinCEN also believes that a 30-calendar-day deadline is necessary to limit the possible abuse of shelf companies—*i.e.,* entities formed as generic corporations without assets and then effectively assigned to new owners. The longer updates are delayed, the longer a shelf company can be ''off the shelf'' without notice to law enforcement of the company's new beneficial owners, and without any notice to financial institutions that they should scrutinize transactions involving the company from the perspective of its new beneficial owners.

The following table provides the detailed cost estimates for the proposed rule, as well as the two alternatives discussed. Please note that ''NPV'' refers to the net present value of cost for a ten-year time horizon, which is calculated at two different discount rates.

[309] These discount rates were applied based on OMB guidance in Circular A–4. *See* Office of Management and Budget, *Circular A–4* (September 17, 2003), available at *https://obamawhitehouse.archives.gov/omb/circulars_a004_a-4/.*

[310] *See* 31 U.S.C. 5336(b)(1)(B).

[311] *See* 31 U.S.C. 5336(b)(1)(D).

[312] There may also be a burden decrease to reporting companies that FinCEN does not separately account for in its estimate: If the timeframe for updated reports is increased to one year, reporting companies that choose to regularly survey their beneficial owners for information changes would not have to reach out on a monthly basis to request any updates from beneficial owners. FinCEN has not accounted for this burden other than in the time required to collect information for an updated report, but welcomes comment on its significance, and the extent it may vary depending based on the permissible update period selected. FinCEN's cost estimates for updated reports also does not currently account for decrease in cost that may be associated with increased use of FinCEN identifiers. If individuals request FinCEN identifiers, reporting companies would not be required to update the individuals' information on the BOI form; individuals with FinCEN identifiers would update their own information with FinCEN directly, consistent with the requirements of the proposed rule.

TABLE 8—COST COMPARISON OF ALTERNATIVES

Timeframe	Proposed rule	Alt. 1	Alt. 2
Year 1	$1,264,450,049.62	$626,598,761.41	$1,247,700,771.35
Year 2	364,577,205.05	723,017,733.35	328,033,325.19
Years 3+	364,577,205.05	364,577,205.05	328,033,325.19
NPV 7%	3,401,640,386.12	3,118,593,526.06	3,163,471,093.78
NPV 3%	3,983,580,464.64	3,702,171,944.94	3,691,071,816.82

In addition to the three scenarios described, FinCEN also compared how the estimated cost changed if more or less burden per report were assumed. A summary table of this comparison is included below. This illustrates that the time burden is a significant component of the overall cost of the rule. This highlights the importance of training, outreach, and compliance assistance in the implementation of this rule in order to decrease the burden and cost to the public.

TABLE 9—COST COMPARISON FOR BURDEN CHANGES

	Proposed burden	More time	Less time
Minutes to file initial BOI report	70	120	45
Minutes to file BOI update	30	60	15
Minutes to file identifier application	20	45	20
Minutes to file identifier update	10	30	10
Minutes to file initial foreign pooled investment vehicle report	40	90	30
Minutes to file update foreign pooled investment vehicle report	20	45	15
Year 1	$1,264,242,966.42	$2,197,972,962.43	$799,607,136.88
Years 2+	$364,517,497.03	$687,963,718.01	$203,220,746.46
NPV 7%	$3,401,083,288.12	$6,243,192,863.55	$1,984,707,941.90
NPV 3%	$3,982,928,060.37	$7,334,498,451.60	$2,312,530,100.97

Finally, FinCEN compared how the estimated cost changed if the benefits factor was increased from 1.42 to 2. FinCEN is conducting this analysis due to the Department of Health and Human Services 2016 ''Guidelines for Regulatory Impact Analysis,'' which recommends that employees undertaking administrative tasks while working should have an assumed benefits factor of 2, which accounts for overhead as well as benefits.[313] This increased the fully loaded wage rate to approximately $54.14. A summary table of this comparison is included below. FinCEN welcomes comment on the appropriate overhead factor FinCEN should use to estimate the burden of the proposed rule.

TABLE 10—COST COMPARISON OF INCREASED BENEFITS FACTOR

Timeframe	Proposed rule—benefits factor 1.42	Comparison—benefits factor 2
Year 1	$1,264,450,049.62	$1,780,915,562.85
Years 2+	364,577,205.05	513,489,021.20
NPV 7%	3,401,640,386.12	4,791,042,797.35
NPV 3%	3,983,580,464.64	5,610,676,710.76

Overall, FinCEN acknowledges that all costs cited herein are based on estimates and welcomes comments illuminating additional considerations or offering estimates, whether they contrast or align with those made above. FinCEN requests that such comments provide a breakdown of the estimates, the reasoning behind costs and numbers provided, and sources when applicable. This will help FinCEN integrate such information into the analysis.

vi. Questions for Comment

General Request for Comments Under the Paperwork Reduction Act:

Comments submitted in response to this notice will be summarized and included in the request for Office of Management and Budget approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services required to provide information.

Other Requests for Comment. In addition, FinCEN generally invites comment on the accuracy of FinCEN's regulatory analysis. FinCEN specifically requests comment on the following, most of which are mentioned in the preceding text.

[313] *See* Department of Health and Human Services, *Guidelines for Regulatory Impact Analysis,* (2016), p. 33, available at *https://aspe.hhs.gov/sites/default/files/migrated_legacy_files//171981/HHS_RIAGuidance.pdf.*

1. What are likely data sources for identifying non-compliance with BOI reporting requirements? What potential costs may be incurred by third parties, particularly state, local, and Tribal authorities and financial institutions, through this process?

2. Are there data or methods available for estimating potential benefits generated by this rule?

3. Is there is a precise way to estimate the number of small businesses that would meet the definition of reporting company with exemptions considered?

4. Are there additional points to add to FinCEN's discussion of possible costs to state, local, and Tribal governments under the proposed rule, including specific estimates of costs if available?

i. In particular, are there specifics FinCEN should add to its discussion of costs to small governmental jurisdictions, pursuant to the Regulatory Flexibility Act? Particularly, what costs might these jurisdictions incur, what types of small governmental jurisdictions could expect to face such costs, whether small governmental jurisdictions may face costs that are different in kind from those which larger jurisdictions may face, and how FinCEN could mitigate the burden on small governmental jurisdictions.

5. Is it feasible for state or Tribal governments that collect BOI to transmit that information to FinCEN by way of existing or revised procedures?

i. In the alternative scenario analysis, is FinCEN's estimate of potential costs to states from collecting and transmitting BOI to FinCEN accurate?

6. Would reporting companies prefer to file BOI via state or Tribal governments rather than directly with FinCEN?

7. Are there available data sources to determine the total number of trusts, and to determine what portion of the total are created or registered with a secretary of state or similar office?

8. Do small businesses anticipate requiring professional expertise to comply with the BOI requirements described herein and what could FinCEN do to minimize the need for such expertise or accurately estimate for such a cost?

9. Are there any significant alternatives that would minimize the impact of the proposed rule on small entities while accomplishing the objectives of the CTA?

10. Are there certain regions that would be disproportionately impacted by the proposed rule, due to corporation formation practices or laws, or another reason? Are there likely disproportionate budgetary effects for particular segments of the private sector in complying with the proposed rule?

11. Is there a way in which FinCEN can make the overall BOI burden estimate, or some component of the burden estimate, more accurate? How could burden of complying with the proposed collection of information be minimized, including through the application of automated collection techniques or other forms of information technology?

12. Are there additional data sources or ways to clarify or improve FinCEN's estimation of the number of existing entities that qualify for each exemption? Specifically:

ii. Is the governmental authorities exemption category less likely to scale by population?

iii. FinCEN does not have data on the number of entities assisting a tax-exempt entity and instead assumes approximately a quarter of the entities in the preceding exemption (*i.e.,* tax-exempt entities) would have a related entity that falls under this exemption. Is this a reasonable assumption to make to estimate the number of entities assisting a tax-exempt entity?

iv. Is any commenter able to offer an estimation of inactive companies? In light of the lack of data on such entities, is it reasonable for FinCEN to assume that inactive companies are not included in the IACA data used to estimate the number of reporting entities?

13. Is FinCEN's approach of not precisely estimating overlapping entity exemptions reasonable? Is there reason to believe that not precisely estimating may result in material inaccuracies?

14. Is FinCEN's methodology for estimating the number of new entities eligible for an exemption from the definition of a reporting company, that is, by assuming that number would be proportionate to the share of existing entities that are eligible for an exemption, reasonable and appropriate?

15. Is there data or a better methodology to appropriately estimate the quantity of updates to BOI due to changes in beneficial ownership as a result of management's decision (*e.g.,* such as from a sale of an ownership interest or a change in substantial control)?

16. Do some states change a driver's license number when a driver's license is renewed? If so, which states?

17. Is FinCEN's methodology for calculating the total number of updated reports reasonable and appropriate?

18. Is any commenter able to provide data or information for the estimation of the number of foreign pooled investment vehicles that are advised by banks, credit unions, or broker-dealers?

19. Are FinCEN's per-report burden estimates reasonable?

20. Does FinCEN need to account in a specific way for the burden of tracking potential changes in beneficial owner or company applicant information? If so, how?

21. What is the appropriate factor that FinCEN should use to estimate the burden of the proposed rule beyond wage costs? Is a factor of 1.42 based on FinCEN's analysis of Bureau of Labor Statistics data appropriate? Is a factor of 2 based on the Department of Health and Human Services' guidance more appropriate because of its inclusion of overhead? Would a factor of 2 be an accurate estimate of benefits and overhead for the proposed rule or is that overhead factor excessive?

22. Are FinCEN's overall cost estimates reasonable and accurate, and if not, what other cost estimates would be?

List of Subjects in 31 CFR Part 1010

Administrative practice and procedure, Aliens, Authority delegations (Government agencies), Banks and banking, Brokers, Business and industry, Commodity futures, Currency, Citizenship and naturalization, Electronic filing, Federal savings associations, Federal-States relations, Foreign persons, Holding companies, Indian—law, Indians, Indians—tribal government, Insurance companies, Investment advisers, Investment companies, Investigations, Law enforcement, Penalties, Reporting and recordkeeping requirements, Small businesses, Securities, Terrorism, Time.

Authority and Issuance

For the reasons set forth in the preamble, part 1010 of chapter X of title 31 of the Code of Federal Regulations is proposed to be amended as follows:

PART 1010—GENERAL PROVISIONS

■ 1. The authority citation for part 1010 is revised to read as follows:

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.

■ 2. Add § 1010.380 to read as follows:

§ 1010.380 Reports of beneficial ownership information.

(a) *Reports required*—(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 formed on or after [effective date of final rule] shall file a report within 14 calendar days of the date it was formed as specified by a secretary of state or similar office.

(ii) Any entity that becomes a foreign reporting company on or after [effective date of the final rule] shall file a report within 14 calendar days of the date it first becomes a foreign reporting company.

(iii) Any domestic reporting company created before [effective date of the final rule] and any entity that became a foreign reporting company before [effective date of the final rule] shall file a report not later than [one year after effective date of the final rule].

(iv) Any entity that no longer meets the criteria for an 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 such exemption.

(2) *Updated report.* A reporting company shall file an updated report in the form and manner specified in paragraph (b)(4) of this section within 30 calendar days after the date on which there is any change with respect to any information previously submitted to FinCEN, including any change with respect to who is a beneficial owner of a reporting company and any change with respect to information reported for any particular beneficial owner or applicant.

(i) 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.

(ii) If an individual is a beneficial owner of a reporting company because the individual owns at least 25 percent of the ownership interests of the reporting company and such individual dies, a change with respect to required information will be deemed to occur when the estate of a 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 remove the deceased former beneficial owner and, to the extent appropriate, identify any new beneficial owners.

(3) *Corrected report.* A reporting company shall file a corrected report in the form and manner specified in paragraph (b) of this section within 14 calendar days after the date on which such reporting company becomes aware or has reason to know that any required information contained in any report under this section was inaccurate when filed and remains inaccurate. A corrected report filed under this paragraph (a)(3) within this 14-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 an inaccurate report is filed.

(b) *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 shall certify that the report is accurate 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 name of the reporting company;

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

(C) The business street address of the reporting company;

(D) The State or Tribal jurisdiction of formation of the reporting company (or for a foreign reporting company, State, or Tribal jurisdiction where such company first registers); and

(E) The Internal Revenue Service (IRS) Taxpayer Identification Number (TIN) (including an Employer Identification Number (EIN)) of the reporting company, or where a reporting company has not yet been issued a TIN, one of the following:

(*1*) Dun & Bradstreet Data Universal Numbering System (DUNS) Number of the reporting company; or

(*2*) Legal Entity Identifier (LEI).

(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) The complete current address consisting of:

(*1*) In the case of a company applicant who files a document described in paragraph (e) of this section in the course of such individual's business, the business street address of such business; or

(*2*) In any other case, the residential street address that the individual uses for tax residency purposes;

(D) A unique identifying number 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*), (*2*), or (*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, which includes both the unique identifying number and photograph in sufficient quality to be legible or recognizable.

(2) *Additional voluntary information.* In addition to the information required under paragraph (b)(1) of this section, a reporting company may include in its initial or any subsequent report the TIN of any beneficial owner or company applicant, provided that:

(i) The reporting company notifies each such beneficial owner or company applicant; and

(ii) Obtains consent from each such beneficial owner or company applicant on a form prescribed by FinCEN.

(3) *Special rules*—(i) *Reporting company owned by exempt entity.* If an exempt entity 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 by virtue of such ownership interest, the report shall include the name of the exempt entity rather than 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)(4)(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) *Deceased company applicant.* If a reporting company was created or registered before [effective date of the final rule], and any company applicant died before [one year after effective date of the final rule], the report shall include that fact, as well as any information required under paragraph (b)(1) of this section of which the reporting company has actual knowledge with respect to such company applicant.

(4) *Contents of updated or corrected report.* If any required information in an initial report is inaccurate or there is a change with respect to any such required information, an updated or corrected report shall include all information necessary to make the report accurate and complete at the time it is filed with FinCEN. 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, its updated report shall include a notification that the entity is no longer a reporting company.

(5) *FinCEN identifier*—(i) *Application for FinCEN identifier.* (A) An individual may obtain a FinCEN identifier by submitting to FinCEN an application containing the information about themselves required under 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 may obtain only one FinCEN identifier.

(ii) *Use of 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) If a reporting company has obtained a FinCEN identifier, the reporting company may include such FinCEN identifier in a report in lieu of the information required under paragraph (b)(1) of this section with respect to such reporting company.

(C) If an individual is or may be a beneficial owner of a reporting company by an interest held by the individual in an entity that, directly or indirectly, holds an interest in the reporting company, and if such intermediary entity has obtained a FinCEN identifier and provided the entity's FinCEN identifier to the reporting company, then the reporting company may include such entity's FinCEN identifier in its report in lieu of the information required under paragraph (b)(1) of this section with respect to such individual.

(D) Any individual or entity that obtains a FinCEN identifier shall file an updated or corrected report to update or correct any information previously submitted to FinCEN in an application for a FinCEN identifier. 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) *Definitions.* 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) Limited liability company; or

(C) Other entity that is 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) *SEC 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 transmitting business.* Any money transmitting business registered with FinCEN under 31 U.S.C. 5330 and 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 section 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) or (D) 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 be continued to be described in this paragraph (c)(2)(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 of which the ownership interests of such entity are controlled or wholly owned, directly or indirectly, by one or more entities described in paragraph (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 12-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 12-month period; and

(F) Does not otherwise hold any kind or type of assets, whether in the United States or abroad, including but not limited to 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.* Substantial control over a reporting company includes:

(i) Service as a senior officer of the reporting company;

(ii) Authority over the appointment or removal of any senior officer or a majority or dominant minority of the board of directors (or similar body);

(iii) Direction, determination, or decision of, or substantial influence over, important matters affecting the reporting company, including but not limited to:

(A) 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;

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

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

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

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

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

(G) 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; and

(iv) Any other form of substantial control over the reporting company.

(2) *Direct or indirect exercise of substantial control.* An individual may directly or indirectly exercise substantial control over a reporting company through a variety of means, including through board representation; through ownership or control of a majority or dominant minority of the voting shares of the reporting company; through rights associated with any financing arrangement or interest in a company; through control over one or more intermediary entities that separately or collectively exercise substantial control over a reporting company; through arrangements or financial or business relationships, whether formal or informal, with other individuals or entities acting as nominees, or through any other contract, arrangement, understanding, relationship, or otherwise. An individual who has the right or ability to exercise substantial control as specified in paragraph (d)(1) of this section and this paragraph (d)(2) shall be deemed to exercise such substantial control.

(3) *Ownership interests.* (i) The term ''ownership interest'' means:

(A) Any equity, stock, or similar instrument, certificate of interest or participation in any profit sharing agreement, preorganization certificate or subscription, transferable share, voting trust certificate or certificate of deposit for an equity security, interest in a joint venture, or certificate of interest in a business trust, without regard to whether any such instrument is transferable, is classified as stock or anything similar, or represents voting or non-voting shares;

(B) Any capital or profit interest in a limited liability company or partnership, including limited and general partnership interests;

(C) Any proprietorship interest;

(D) Any instrument convertible, with or without consideration, into any instrument described in paragraph (d)(3)(i)(A), (B), or (C) 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)(3)(i)(A), (B), or (C) of this section, regardless of whether characterized as debt; or

(E) Any put, call, straddle, or other option or privilege of buying or selling any of the items described in paragraph (d)(3)(i)(A), (B), (C), or (D) of this section without being bound to do so.

(ii) An individual may directly or indirectly own or control an ownership interest of a reporting company through a variety of means, including but not limited to:

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

(B) Through control of such ownership interest owned by another 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:

(*i*) 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; or

(*ii*) Through any other contract, arrangement, understanding, or relationship.

(iii) In determining whether an individual owns or controls 25 percent of the ownership interests of a reporting company, the ownership interests of the reporting company shall include all ownership interests of any class or type, and the percentage of such ownership interests that an individual owns or controls shall be determined by aggregating all of the individual's ownership interests in comparison to the undiluted ownership interests of the company.

(4) *Exceptions.* Notwithstanding any other provision of paragraph (d) of this section, 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)(3)(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 and not as a senior officer, whose substantial control over or economic benefits from such entity are derived solely from the employment status of the employee;

(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)(4)(v), a creditor is an individual who would be a beneficial owner under the other provisions of paragraph (d) of this section solely through rights or interests in the company for the payment of a predetermined sum of money, such as a debt and the payment of interest on such debt. For the avoidance of doubt, any capital interest in the reporting company, or any right or interest in the value of the reporting company or its profits, are not such rights or interests for payment of a predetermined sum, regardless of whether they take the form of a debt instrument. If the individual has a right or ability to convert the right to payment of a predetermined sum to any form of ownership interest in the company, that individual is not a creditor of a reporting company for purposes of this section.

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

(1) For a domestic reporting company, any individual who files the document that creates the domestic reporting company as described in paragraph (c)(1)(i) of this section, including any individual who directs or controls the filing of such document by another person; and

(2) For a foreign reporting company, any individual who files the document that first registers the foreign reporting company as described in paragraph (c)(1)(ii) of this section, including any individual who directs or controls the filing of such document by another person.

(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, that is not the place of residence of any individual, 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.

(8) *Senior officer.* The term ''senior officer'' means any individual holding the position or exercising the authority of a president, secretary, treasurer, 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.* (1) 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.

(2) For purposes of this paragraph (g), the term ''person'' includes any individual, reporting company, or other entity.

(3) For purposes of this paragraph (g), the term ''beneficial ownership information'' includes any information provided to FinCEN under this section.

(4) 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.

(5) A person fails to report complete or updated beneficial ownership information to FinCEN if such person directs or controls another person with respect to any such failure to report, or is in substantial control of a reporting company when it fails to report complete or updated beneficial ownership information to FinCEN.

Himamauli Das,

Acting Director, Financial Crimes Enforcement Network.

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