

**RED ALERT!!!**  
**THE CORPORATE TRANSPARENCY ACT IS COMING**  
**AND EVERY ESTATE PLANNER NEEDS TO KNOW ABOUT IT**

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**Waukesha County Estate Planning Council, Ltd.**  
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**I. THE CORPORATE TRANSPARENCY ACT**

- A. Passed by bipartisan supermajorities in the House and the Senate on January 1, 2021 as part of the William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021, Public Law 116-283 (Jan. 1, 2021) and also amends the Bank Secrecy Act [31 U.S.C § 5336]
- B. Purpose – anti-money laundering and counter-terrorist financing measure
- C. Directs FinCEN (the Financial Crimes Enforcement Network), an agency of the U.S. Department of the Treasury, to issue regulations requiring certain entities to file a Report of Beneficial Ownership Information with FinCEN
- D. On September 29, 2022, FinCEN issued the regulations, referred to as the Final Rule, with respect to Beneficial Ownership Information Reporting Requirements and they were published on September 30, 2022 in the Federal Register as new Section 1010.380 of 31 CFR Part 1010 Subpart C [See Appendix 1]
- E. The preamble to the Final Rule describes Beneficial Ownership Information as “information about [an entity’s] beneficial owners and the individuals who created the entity” and often refers to the Report of Beneficial Ownership Information as the “BOI Report”

- F. *RSN Note 1:* In this outline I will refer to the Report of Beneficial Ownership Information as the Report
- G. *RSN Note 2:* Why estate planning attorneys have to know about the intricacies of the Corporate Transparency Act (the CTA)
  - 1. We often advise clients to create entities and may have created those entities for them – family limited partnerships, family LLCs, LLCs to hold real estate, corporations, LLCs, and partnerships to own new businesses, etc.
  - 2. Many of our clients own entities which we did not create but which we know about through our estate planning for our client
  - 3. Our clients may want us to file the Reports for them
  - 4. Our law firms are entities
- H. We will be discussing:
  - 1. Who has to file the Report
  - 2. The three types of Reports
  - 3. When the Report is due
  - 4. The contents of the Report
  - 5. The penalties for failing to file the Report
  - 6. Our role as attorneys
- I. The Beneficial Ownership Information in those Reports will be kept confidential by the BOSS (the Beneficial Ownership Secure System)
  - 1. A computer software program being developed by the government to store the Beneficial Ownership Information
  - 2. The CTA directs the Secretary of the Treasury to maintain Beneficial Ownership Information “in a secure, nonpublic database, using information security methods and techniques that are appropriate to protect non-classified information security systems at the highest security level . . . .”

- J. Only law enforcement will have access to the Beneficial Ownership Information stored in the BOSS
- K. FinCEN has not issued the Report form yet; the preamble to the Final Rule indicates that it will probably be an electronically filed form

## **II. EFFECTIVE DATE**

- A. The requirements of the Final Rule are effective January 1, 2024
- B. Many commentators expected a January 1, 2023 effective date, so this was a major relief

## **III. THREE KEY TERMS FROM THE CTA THAT WE MUST UNDERSTAND**

- A. Reporting Company – entity required to file a Report (discussed in VII below)
  - 1. Domestic Reporting Company – an entity created by the filing of a document with a Secretary of State or any similar office
  - 2. Foreign Reporting Company – an entity 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
  - 3. *RSN Note 3:* This outline will only cover Domestic Reporting Companies
- B. Beneficial Owner – an individual who directly or indirectly owns or controls at least 25% of the Reporting Company and an individual who directly or indirectly exercises substantial control over the Reporting Company, all of whose information will be in the Report (discussed in VIII below)
- C. Company Applicant – an individual who filed the document with the Secretary of State that created the Reporting Company and an individual who was primarily responsible for directing or controlling the filing, both of whose information will be in the Report for Reporting Companies created on and after January 1, 2024 (discussed in IX below)

#### **IV. WHO HAS TO FILE THE REPORT**

- A. The Reporting Company is required to file its own Report [31 CFR § 1010.380(a)(1), (2), & (3)]
- B. *RSN Note 4:* I recommend that the Reporting Company clearly designate an owner, employee, or outside professional who will have the responsibility for timely filing the Report and monitoring the necessary information to keep the Report up to date with Updated Reports

#### **V. THREE TYPES OF REPORTS AND WHEN THEY ARE DUE**

- A. Initial Report
  - 1. For Reporting Companies formed before January 1, 2024
    - a. Reporting Company information and Beneficial Ownership Information [31 CFR § 1010.380(b)(1) & (2)(iv)]
    - b. *RSN Note 5:* It does not include Company Applicant information
    - c. Due January 1, 2025 [31 CFR § 1010.380(a)(1)(iii)]
  - 2. For Reporting Companies formed on or after January 1, 2024
    - a. Reporting Company information, Beneficial Owners information, and Company Applicant information [31 CFR § 1010.380(b)(1)]
    - b. Due 30 days after creation (i.e., “the earlier of the date on which it receives actual notice that its creation has become effective or the date on which a secretary of state or similar office first provides public notice, such as through a publicly accessible registry, that the domestic reporting company has been created”) [31 CFR § 1010.380(a)(1)(i)]

- c. On September 27, 2023, FinCEN issued a Notice of Proposed Rulemaking that would change this 30 day due date to 90 days but only for the Initial Report of a Reporting Company created in calendar year 2024 [88 FR 66730]

B. Updated Report

1. For any entity information and any Beneficial Owners information which has changed, including adding or removing a Beneficial Owner [31 CFR § 1010.380(b)(3)(i)]
2. *RSN Note 6:* It does not include changes to Company Applicant information
3. Death of a Beneficial Owner is a change when the testamentary disposition of the Reporting Company occurs [31 CFR § 1010.380(a)(2)(iii)]
4. Due 30 days after the change occurred [31 CFR § 1010.380(a)(2)(i)]
5. *RSN Note 7:* Not 30 days after the Reporting Company learns of the change

C. Corrected Report

1. To correct an error in the Initial Report or an Updated Report [31 CFR § 1010.380(b)(3)(iii)]
2. Due 30 days after the date on which the Reporting Company becomes aware or has reason to know of the inaccuracy [31 CFR § 1010.380(a)(3)]

**VI. CONTENTS OF INITIAL REPORT**

A. Reporting Company information [31 CFR § 1010.380(b)(1)(i)]

1. Full legal name
2. Any trade name or “doing business as” name

3. Complete current street address consisting of:
    - a. In the case of a Reporting Company with a principal place of business in the U.S., the street address of such principal place of business
    - b. In all other cases, the street address of the primary location in the U.S. where the Reporting Company conducts business
  4. State or tribal jurisdiction of formation
  5. Employer Identification Number (EIN) or Taxpayer Identification Number (TIN)
- B. Beneficial Owners and Company Applicants information [31 CFR § 1010.380(b)(1)(ii)]
1. Full legal name
  2. Date of birth
  3. Complete current address consisting of:
    - a. Residential street address;
    - b. Except in the case of a Company Applicant who forms or registers an entity in the course of such company applicant's business, the street address of such business
  4. A unique identifying number and the issuing jurisdiction from one of the following documents and an image of the document:
    - a. A non-expired passport issued by the U.S. government
    - b. A non-expired identification document issued by a State, local government, or Indian tribe for the purpose of identifying the individual;
    - c. A non-expired driver's license issued by a State; or

- d. A non-expired passport issued by a foreign government, if the individual does not possess any of the above documents
- 5. *RSN Note 8:* These are natural persons
- 6. *RSN Note 9:* If the information for a parent or legal guardian of a minor child is included and they are identified as a parent or legal guardian, then the minor child is not included; minority is determined by the law of the State in which the Reporting Company was created [31 CFR § 1010.380(b)(2)(ii)]
- 7. *RSN Note 10:* Information for Company Applicants is not included for Reporting Companies created before January 1, 2024
- 8. *RSN Note 11:* An individual may obtain a FinCEN Identifier number from FinCEN using an application that contains all of the above information; then all Reporting Companies may include that individual's FinCEN Identifier on the Report instead of the information listed above [31 CFR § 1010.380(b)(4)]; seems particularly useful for Company Applicants who frequently form Reporting Companies

## **VII. REPORTING COMPANY**

- A. Domestic Reporting Company – an entity created by the filing of a document with a Secretary of State or any similar office [31 CFR § 1010.380(c)(1)(i)]
- B. There are twenty-three listed exemptions for entities who are then not required to file a Report [31 CFR § 1010.380(c)(2)]
  - 1. Most are entities which are already subject to disclosure rules, such as banks and publicly traded companies
  - 2. Tax-exempt entities described in IRC Sec. 501(c) which are exempt from tax under IRC Sec. 501(a) are not Reporting Companies [31 CFR § 1010.380(c)(2)(xix)]

3. Public accounting firms registered under Sec. 102 of the Sarbanes-Oxley Act of 2002 are not Reporting Companies [31 CFR § 1010.380(c)(2)(xv)]
4. Large operating companies which meet all three of the following tests are not Reporting Companies [31 CFR § 1010.380(c)(2)(xxi)]:
  - a. Has more than 20 full time employees (*see* Treas. Reg. §§ 54.4980H-1(a) and 54.4980H-3)
  - b. Has an operating presence at a physical office within the U.S.
    - (1) This requires that “an entity regularly conducts its business at a physical location in the U.S. that the entity owns or leases and that is physically distinct from the place of business of any other unaffiliated entity” [31 CFR § 1010.380(f)(6)]
    - (2) *RSN Note 12*: If all employees work remotely, this test cannot be met
  - c. Filed a Federal income tax or information return in the U.S. for the previous year demonstrating more than \$5,000,000 in gross receipts or sales, excluding gross receipts or sales from sources outside the U.S.
5. *RSN Note 13*: A Wisconsin law firm which is an S.C. or LLC (not LLP) with 20 or fewer full time employees or not more than \$5,000,000 in gross receipts will be a Reporting Company

## **VIII. BENEFICIAL OWNER**

- A. An individual who directly or indirectly either [31 CFR § 1010.380(d)]:
  1. Owns or controls at least 25% of the Reporting Company
  2. Exercises substantial control over the Reporting Company
- B. Owns or controls [31 CFR § 1010.380(d)(2)]



1. An individual may directly or indirectly own or control an ownership interest of a reporting company through any contract, arrangement, understanding, relationship, or otherwise, including:
  - a. Joint ownership
  - b. Through another individual acting as a nominee, intermediary, custodian, or agent
  - c. Through ownership or control of one or more intermediary entities
  - d. Through a trust as described in 2 below
2. Ownership or control through a trust includes [31 CFR § 1010.380(d)(2)(ii)(C)]:
  - a. A trustee or other individual with authority to dispose of the Reporting Company
  - b. A beneficiary who is the sole permissible recipient of income and principal from the trust
  - c. A beneficiary who has the right to demand a distribution of or withdraw substantially all of the assets from the trust
  - d. A grantor or settlor who has the right to revoke the trust or otherwise withdraw the assets of the trust
3. Exceptions
  - a. A minor child if the information for a parent or legal guardian of the minor child is included and they are identified as a parent or legal guardian; minority is determined by the law of the State in which the Reporting Company was created [31 CFR § 1010.380(d)(3)(i)]
  - b. An individual acting as a nominee, intermediary, custodian, or agent [31 CFR § 1010.380(d)(3)(ii)]

- c. An individual whose only interest in a reporting company is a future interest through a right of inheritance [31 CFR § 1010.380(d)(3)(iv)]

C. Substantial control

- 1. An individual directly or indirectly exercises substantial control over the Reporting Company in any of the following cases [31 CFR § 1010.380(d)(1)(i)]:
  - a. Serves as a senior officer of the Reporting Company; a senior officer is “any individual holding the position or exercising the authority of a president, chief financial officer, general counsel, chief executive officer, chief operating officer, or any other officer, regardless of official title, who performs a similar function” [31 CFR § 1010.380(f)(8)]
  - b. Has authority over the appointment or removal of any senior officer or a majority of the board of directors (or similar body)
  - c. Directs, determines, or has substantial influence over important decisions made by the Reporting Company, including decisions regarding any of the following:
    - (1) Nature, scope, and attributes of the business of the Reporting Company, including the sale, lease, mortgage, or other transfer of any principal assets
    - (2) Reorganization, dissolution, or merger
    - (3) Major expenditures or investments, issuances of any equity, incurrence of any significant debt, or approval of the operating budget
    - (4) Selection or termination of business lines or ventures, or geographic focus
    - (5) Compensation schemes and incentive programs for senior officers

- (6) Entry into or termination, or the fulfillment or non-fulfillment, of significant contracts
    - (7) Amendments of any substantial governance documents, including the articles of incorporation or similar formation documents, bylaws, and significant policies or procedures
  - d. Has any other form of substantial control over the Reporting Company
- 2. An individual may directly or indirectly, including as a trustee of a trust or similar arrangement, exercise substantial control over a Reporting Company through any of the following [31 CFR § 1010.380(d)(1)(ii)]:
  - a. Board representation
  - b. Ownership or control of a majority of the voting power or voting rights
  - c. Rights associated with any financing arrangement or interest in a company
  - d. Control over one or more intermediary entities that separately or collectively exercise substantial control over a Reporting Company
  - e. Arrangements or financial or business relationships, whether formal or informal, with other individuals or entities acting as nominees
  - f. Any other contract, arrangement, understanding, relationship, or otherwise
- 3. Exceptions
  - a. An employee of a Reporting Company, acting solely as an employee, whose substantial control over or economic benefits from such entity are derived solely from the employment status of the employee, provided that such person is not a senior officer as defined in C.1.a. above [31 CFR § 1010.380(d)(3)(iii)]

- b. A creditor of a Reporting Company [31 CFR § 1010.380(d)(3)(v)]
- 4. *RSN Note 14:* An individual with substantial control over the Reporting Company will be a Beneficial Owner even though that individual does not own any ownership interests in the Reporting Company
- 5. *RSN Note 15:* This is a facts and circumstances analysis which makes it much more difficult to reach a definite conclusion of who is included in some situations; because of the potential penalties, a conservative approach to this may be best

## **IX. COMPANY APPLICANT**

- A. The individual who directly files the document that creates the domestic reporting company [31 CFR § 1010.380(e)(1)]
- B. The individual who is primarily responsible for directing or controlling such filing if more than one individual is involved in the filing of the document [31 CFR § 1010.380(e)(3)]
- C. *RSN Note 16:* There will be no more than two Company Applicants

## **X. PENALTIES**

- A. It shall be unlawful for any person to [31 CFR § 1010.380(g)]:
  - 1. Willfully provide, or attempt to provide, false or fraudulent beneficial ownership information, including a false or fraudulent identifying photograph or document, to FinCEN; or
  - 2. Willfully fail to report complete or updated beneficial ownership information to FinCEN
- B. Civil and criminal penalties
  - 1. Civil penalty of not more than \$500 for each day that the violation continues or has not been remedied [31 U.S.C. § 5336(h)(3)(A)(i)]; and

2. May be fined not more than \$10,000, imprisoned for not more than 2 years, or both [31 U.S.C. § 5336(h)(3)(A)(ii)]

## **XI. THE ROLE OF ATTORNEYS**

- A. Notify clients of the filing requirements of the CTA – good marketing or an ethical obligation?
- B. Advise clients with respect to establishing CTA compliance procedures
- C. Advise clients about who is a Beneficial Owner
- D. Advise clients about whether an entity is exempt
- E. Prepare and file the Report on behalf of the Reporting Company
- F. Revise documents of Reporting Companies to require Beneficial Owners to provide and update the appropriate person at the Reporting Company with the information needed for filing an accurate and timely Initial Report and for filing accurate and timely Updated Reports
- G. Mergers and acquisitions due diligence checklist – add compliance with the CTA
- H. If your law firm is a Reporting Company, make sure that your firm does all that is necessary to comply



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Randy Nelson is a Shareholder focusing his practice on estate planning, advising family businesses, tax planning, trust administration and probate. He is a Certified Public Accountant and was an Adjunct Professor at Marquette University Law School where he taught estate planning for over 30 years. He is a frequent speaker at continuing education courses for lawyers and CPAs on the subjects of estate planning and tax planning. He is the author of the chapter "Estate Planning for Owners of Closely Held Businesses" in *Eckhardt's Workbook for Wisconsin Estate Planners* published by the State Bar of Wisconsin.

Randy is currently the chair of the State Bar of Wisconsin (SBW) Drafting Committee which is working on the Wisconsin Uniform Fiduciary Income and Principal Act, a member of the State Bar of Wisconsin/Wisconsin Bankers Association (SBW/WBA) Drafting Committee working on the trailer bill to modify the Wisconsin Trust Code, and a member of the SBW Drafting Committee which is working on the Wisconsin Uniform Power of Appointment Act. He chaired the SBW/WBA Drafting Committee responsible for the Wisconsin Uniform Principal and Income Act which was passed in 2005 and was a member of the SBW/WBA Drafting Committee responsible for the Wisconsin Trust Code which was passed in 2013.

#### Areas of Practice

- Estate Planning
- Estate and Trust Administration
- Trusts and Estates
- Fiduciary Litigation and Inheritance Disputes
- Business Succession Planning
- Business and Corporate Law
- Sports Law
- Tax
- Nonprofit and Tax Exemption
- Dispute Resolution

#### Education

- Marquette University, J.D., *cum laude*
- University of Wisconsin-Milwaukee, B.B.A., *with honors*

#### Bar Admissions

- Wisconsin
- U.S. District Court, Eastern and Western Districts of Wisconsin
- U.S. Tax Court

#### Professional and Civic Associations

- American College of Trust and Estate Counsel (ACTEC), Fellow; Member, Business Planning Committee
- Milwaukee Estate Planning Forum
- Wisconsin Institute of Certified Public Accountants
- American Institute of Certified Public Accountants

- American Bar Association
- State Bar of Wisconsin
- Milwaukee Bar Association

## Honors and Accomplishments

- Accredited Estate Planner<sup>®</sup>, National Association of Estate Planners & Councils
- *The Best Lawyers in America*<sup>®</sup>, Trusts and Estates Law (1995-2024)
- Best Lawyers<sup>®</sup> Trusts and Estates "Lawyer of the Year", Milwaukee (2013)
- Wisconsin Super Lawyers<sup>®</sup> (2005-2022)
- Wisconsin Law Foundation, Fellow
- AV Preeminent<sup>®</sup> Peer Review Rated by *Martindale-Hubbell*<sup>®</sup>
- Past Chairperson and Director of Real Property, Probate and Trust Law Section, State Bar of Wisconsin
- Herbert J. Mueller Society of the Greater Milwaukee Foundation

## Community Involvement

- Jewish Family Services, Inc., Board of Directors, Executive Committee

exclusively than doing so indirectly through one or more individuals at one or more reporting companies) and administrative efficiency (where an individual is likely to be identified as a beneficial owner of numerous reporting companies). Company applicants that are responsible for registering many reporting companies may have a similar 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 incentives described in the previous paragraph, which are based on assumptions, FinCEN estimates that the number of individuals who will apply for a FinCEN identifier will likely be relatively low. FinCEN is estimating that number to be approximately 1 percent of the reporting company estimates. This is the same assumption made by FinCEN in the NPRM to estimate the number of individuals applying for a FinCEN identifier. Given that the number of reporting companies estimated in the RIA has increased, this estimate will increase proportionally. FinCEN assumes that, similar to reporting companies' initial filings, there would be an initial influx of applications for a FinCEN identifier that would then decrease to a smaller annual rate of requests after Year 1. Therefore, FinCEN estimates that 325,569 individuals will apply for a FinCEN identifier during Year 1 and 49,985 individuals will apply for on a FinCEN identifier annually thereafter.<sup>437</sup> The total five-year average of expected FinCEN identifier applications is 105,102. 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 based on the number of FinCEN identifier applications received in Year 1. However, FinCEN only applied the monthly probability of 0.0068021 (8.16 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 an individual's identifying information. This analysis estimated 12,180 updates in Year 1 and 26,575 annually thereafter.<sup>438</sup> The total five-

year average of estimated FinCEN identifier updates is 23,696.

**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 an image 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 108,535,<sup>439</sup> with an annual burden of 16,662 hours thereafter.<sup>440</sup> The five-year average of initial application burden is 35,034 hours. FinCEN estimates the burden hours of individuals updating FinCEN identifier related information to be 2,030 in Year 1,<sup>441</sup> with an annual burden of 4,429 hours thereafter.<sup>442</sup> The five-year average of updated application burden is 3,949 hours. The total five-year average of time burden is 38,983.

**Estimated Total Reporting Cost:** The total cost of FinCEN identifier applications for individuals in Year 1 is estimated to be \$6.2 million, with an annual cost of \$945,667 thereafter.<sup>443</sup> The five-year average of initial applications cost is \$1,988,431. The total cost of FinCEN identifier updates for individuals in Year 1 is estimated to be \$115,219, with an annual cost of \$251,386 thereafter.<sup>444</sup> The five-year average of updated applications cost is \$224,153. The total five-year average cost is \$2,212,584.

#### E. Congressional Review Act

Pursuant to the Congressional Review Act (CRA), OMB's Office of Information and Regulatory Affairs has designated this rule a "major rule," for purposes of Subtitle E of the Small Business Regulatory Enforcement and Fairness Act of 1996 (also known as the Congressional Review Act or CRA).<sup>445</sup> Under the CRA, a major rule generally may take effect no earlier than 60 days

after the rule is published in the **Federal Register**.<sup>446</sup>

#### List of Subjects in 31 CFR Parts 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-State 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, the U.S. Department of the Treasury and Financial Crimes Enforcement Network amend 31 CFR part 1010 as follows:

#### PART 1010—GENERAL PROVISIONS

■ 1. The authority citation for part 1010 is amended 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 subpart C to read as follows:

#### § 1010.380 Reports of beneficial ownership information

(a) *Reports required; timing of reports*—(1) *Initial report.* Each reporting company shall file an initial report in the form and manner specified in paragraph (b) of this section as follows:

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

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

<sup>437</sup>  $32,556,929 \times 0.01 = 325,569$  and  $4,998,468 \times 0.01 = 49,985$ , respectively.

<sup>438</sup> Please see RIA cost analysis for the underlying sources and analysis related to these estimates.

<sup>439</sup>  $325,569 \times (20/60) = 108,535$ .

<sup>440</sup>  $49,985 \times (20/60) = 16,662$ .

<sup>441</sup>  $12,180 \times (10/60) = 2,030$ .

<sup>442</sup>  $26,575 \times (10/60) = 4,429$ .

<sup>443</sup>  $(\$56.76 \times (20/60)) \times 325,569 = \$6,159,488.81$  and  $(\$56.76 \times (20/60)) \times 49,985 = \$945,666.84$ .

<sup>444</sup>  $(\$56.76 \times (10/60)) \times 12,180 = \$115,218.68$  and  $(\$56.76 \times (10/60)) \times 26,575 = \$251,386.22$ .

<sup>445</sup> 5 U.S.C. 804(2) *et seq.*

<sup>446</sup> 5 U.S.C. 801(a)(3).



notice, such as through a publicly accessible registry, that the foreign reporting company has been registered to do business.

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

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

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

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

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

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

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

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

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

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

(i) For the reporting company:

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

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

(C) A complete current address consisting of:

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

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

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

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

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

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

(A) The full legal name of the individual;

(B) The date of birth of the individual;

(C) A complete current address consisting of:

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

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

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

(1) A non-expired passport issued to the individual by the United States government;

(2) A non-expired identification document issued to the individual by a State, local government, or Indian tribe for the purpose of identifying the individual;

(3) A non-expired driver's license issued to the individual by a State; or

(4) A non-expired passport issued by a foreign government to the individual, if the individual does not possess any of the documents described in paragraph (b)(1)(ii)(D)(1), (b)(1)(ii)(D)(2), or (b)(1)(ii)(D)(3) of this section; and

(E) An image of the document from which the unique identifying number in paragraph (b)(1)(ii)(D) of this section was obtained.

(2) *Special rules*—(i) *Reporting company owned by exempt entity.* If one or more exempt entities under paragraph (c)(2) of this section has or will have a direct or indirect ownership interest in a reporting company and an individual is a beneficial owner of the reporting company exclusively by virtue of the individual's ownership interest in such exempt entities, the report may include the names of the exempt entities in lieu of the information required under paragraph (b)(1) of this section with respect to such beneficial owner.

(ii) *Minor child.* If a reporting company reports the information required under paragraph (b)(1) of this section with respect to a parent or legal guardian of a minor child consistent with paragraph (d)(3)(i) of this section, then the report shall indicate that such information relates to a parent or legal guardian.

(iii) *Foreign pooled investment vehicle.* If an entity would be a reporting company but for paragraph (c)(2)(viii) of this section, and is formed under the laws of a foreign country, such entity shall be deemed a reporting company for purposes of paragraphs (a) and (b) of this section, except the report shall include the information required under paragraph (b)(1) of this section solely with respect to an individual who exercises substantial control over the entity. If more than one individual exercises substantial control over the

entity, the entity shall report information with respect to the individual who has the greatest authority over the strategic management of the entity.

(iv) *Company applicant for existing companies.* Notwithstanding paragraph (b)(1)(ii) of this section, if a reporting company was created or registered before January 1, 2024, the reporting company shall report that fact, but is not required to report information with respect to any company applicant.

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

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

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

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

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

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

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

(B) [Reserved]

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

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

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

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

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

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

(A) A corporation;

(B) A limited liability company; or

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

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

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

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

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

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

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

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

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

(ii) *Governmental authority.* Any entity that:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Advisers Act of 1940 (15 U.S.C. 80b–1 *et seq.*).

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

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

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

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

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

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

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

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

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

(B) Is:

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

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

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

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

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

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

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

(A) An organization that is described in section 501(c) of the Internal Revenue

Code of 1986 (Code) (determined without regard to section 508(a) of the Code) and exempt from tax under section 501(a) of the Code, except that in the case of any such organization that ceases to be described in section 501(c) and exempt from tax under section 501(a), such organization shall be considered to continue to be described in this paragraph (c)(1)(ix)(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)(ix) of this section;

(B) Is a United States person;

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

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

(xxi) *Large operating company.* Any entity that:

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

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

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

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

(xxiii) *Inactive entity.* Any entity that:

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

(B) Is not engaged in active business;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(A) Board representation;

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

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

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

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

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

(2) *Ownership Interests*—(i) *Definition of ownership interest.* The term “ownership interest” means:

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

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

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

(D) Any put, call, straddle, or other option or privilege of buying or selling any of the items described in paragraph (d)(2)(i)(A), (B), or (C) of this section without being bound to do so, except to the extent that such option or privilege

is created and held by a third party or third parties without the knowledge or involvement of the reporting company; or

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

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

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

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

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

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

(2) As a beneficiary who:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(6) *Operating presence at a physical office within the United States.* The term “has an operating presence at a physical office within the United States” means

that an entity regularly conducts its business at a physical location in the United States that the entity owns or leases and that is physically distinct from the place of business of any other unaffiliated entity.

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

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

(ii) Any company that:

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

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

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

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

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

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

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

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

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

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

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

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

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

**Himamauli Das,**

*Acting Director, Financial Crimes Enforcement Network.*

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