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: Final rule.

SUMMARY: FinCEN is issuing a final rule requiring certain entities to file with FinCEN reports that identify two categories of individuals: the beneficial owners of the entity, and individuals who have filed an application with specified governmental authorities to create the entity or register it to do business. These regulations 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. These requirements are intended to help prevent and combat money laundering, terrorist financing, corruption, tax fraud, and other illicit activity, while minimizing the burden on entities doing business in the United States.

DATES: *Effective date:* These rules are effective January 1, 2024.

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

SUPPLEMENTARY INFORMATION:

I. Introduction

Illicit actors frequently use corporate structures such as shell and front companies to obfuscate their identities and launder their ill-gotten gains through the U.S. financial system. Not only do such acts undermine U.S. national security, but they also threaten U.S. economic prosperity: shell and front companies can shield beneficial owners' identities and allow criminals to illegally access and transact in the U.S. economy, while creating an uneven playing field for small U.S. businesses engaged in legitimate activity.

Millions of small businesses are formed within the United States each year as corporations, limited liability companies, or other corporate structures. These businesses play an essential and legitimate economic role. Small businesses are a backbone of the U.S. economy, accounting for a large share of U.S. economic activity, and driving U.S. innovation and competitiveness.[1] In addition, U.S. small businesses generate jobs, and in 2021 created jobs at the highest rate on record.[2]

Few jurisdictions in the United States, however, require legal entities to disclose information about their beneficial owners—the individuals who actually own or control an entity—or individuals who take the steps to create an entity. Historically, the U.S. Government's inability to mandate the collection of beneficial ownership information of corporate entities formed in the United States has been a vulnerability in the U.S. anti-money laundering/countering the financing of terrorism (AML/CFT) framework. As stressed in the 2022 National Strategy for Combating Terrorist and Other Illicit Financing (the ''2022 Illicit Financing Strategy''), a lack of uniform beneficial ownership information reporting requirements at the time of entity formation or ownership change hinders the ability of (1) law enforcement to swiftly investigate those entities created and used to hide ownership for illicit purposes and (2) a regulated sector to mitigate risks.[3] This lack of transparency creates opportunities for criminals, terrorists, and other illicit actors to remain anonymous while facilitating fraud, drug trafficking, corruption, tax evasion, organized crime, or other illicit activity through legal entities created in the United States.

For more than two decades, the U.S. Government has documented the use of legal entities by criminal actors to purchase real estate, conduct wire transfers, burnish the appearance of legitimacy when dealing with counterparties (including financial institutions), and control legitimate businesses for ultimately illicit ends, and has published extensively on this topic to raise awareness.[4]

Recent geopolitical events have reinforced the threat that abuse of corporate entities, including shell or front companies, by illicit actors and corrupt officials presents to the U.S. national security and the U.S. and international financial systems. For example, Russia's unlawful invasion of Ukraine in February 2022 further underscored that Russian elites, state-owned enterprises, and organized crime, as well as the Government of the Russian Federation have attempted to use U.S. and non-U.S. shell companies to evade sanctions imposed on Russia. Money laundering and sanctions evasion by these sanctioned Russians pose a significant threat to the national security of the United States and its partners and allies.

In a recent example of how sanctioned Russian individuals used shell companies to avoid U.S. sanctions and other applicable laws, Spanish law enforcement executed a Spanish court order in the Spring of 2022, freezing the Motor Yacht (M/Y) Tango (the ''Tango''), a 255-foot luxury yacht owned by sanctioned Russian oligarch Viktor Vekselberg. Spanish authorities acted pursuant to a request from the U.S. Department of Justice (DOJ) following the issuance of a seizure warrant, filed in the U.S. District Court for the District of Columbia, which alleged that the Tango was subject to forfeiture based on violations of U.S. bank fraud and money laundering statutes, as well as sanctions violations. The U.S. Government alleged that Vekselberg used shell companies to obfuscate his interest in the Tango to avoid bank oversight of U.S. dollar transactions related thereto.[5]

Furthermore, the governments of Australia, Canada, the European Commission, Germany, Italy, France, Japan, the United Kingdom, and the United States launched the Russian Elites, Proxies, and Oligarchs (REPO) Task Force in March 2022, with the purpose of collecting and sharing information to take concrete actions, including sanctions, asset freezing, civil and criminal asset seizure, and criminal prosecution with respect to persons who supported the Russian invasion of Ukraine.[6] In its June 29, 2022 Joint

[1] *See e.g.,* U.S. Small Business Administration, *Small Business GDP 1998–2014* (Dec. 2018), available at *https://cdn.advocacy.sba.gov/wp-content/uploads/2018/12/21060437/Small-Business-GDP-1998-2014.pdf.*

[2] The White House, *The Small Business Boom under the Biden-Harris Administration* (Apr. 2022), pp. 3–4, available at *https://www.whitehouse.gov/wp-content/uploads/2022/04/President-Biden-Small-Biz-Boom-full-report-2022.04.28.pdf.*

[3] *See* U.S. Department of the Treasury (Treasury), *National Strategy for Combating Terrorist and Other Illicit Financing* (May 2022), p. 12, available at *https://home.treasury.gov/system/files/136/2022-National-Strategy-for-Combating-Terrorist-and-Other-Illicit-Financing.pdf* (''2022 Illicit Financing Strategy'').

[4] *See e.g.,* Treasury, *U.S. Money Laundering Threat Assessment* (Dec. 2005), available at *https://home.treasury.gov/system/files/246/mlta.pdf,* and FinCEN, *Advisory: FATF–VII Report on Money Laundering Typologies* (Aug. 1996), available at *https://www.fincen.gov/sites/default/files/advisory/advissu4.pdf.*

[5] U.S. Department of Justice (DOJ), Office of Public Affairs, *$90 Million Yacht of Sanctioned Russian Oligarch Viktor Vekselberg Seized by Spain at Request of United States* (Apr. 4, 2022), available at *https://www.justice.gov/opa/pr/90-million-yacht-sanctioned-russian-oligarch-viktor-vekselberg-seized-spain-request-united.*

[6] Treasury, *U.S. Departments of Treasury and Justice Launch Multilateral Russian Oligarch Task*

Statement, the REPO Task Force noted that to identify sanctioned Russians who are beneficiaries of shell companies that held assets, REPO members relied on the use of registries where available, including beneficial ownership registries.[7]

Domestic criminal actors also use corporate entities to obfuscate their illicit activities. In June 2021, the Department of Justice (''DOJ'') announced that an individual in Florida pled guilty to working with co-conspirators to steal $24 million of COVID–19 relief money by using synthetic identities and shell companies they had created years earlier to commit other bank fraud. The individual and his co-conspirators used established synthetic identities and associated shell companies to fraudulently apply for financial assistance under the Paycheck Protection Program (PPP). They applied for and received $24 million dollars in PPP relief. The money was paid to companies registered to the individual and his co-conspirators, as well as to companies registered to synthetic identities that he and his co-conspirators controlled.[8] Similarly, in July 2022, the DOJ announced that a Virginia man was sentenced to 33 months in prison for his role in a conspiracy that involved the submission of at least 63 fraudulent loan applications to obtain COVID–19 pandemic relief funds to which he and his co-defendants were not entitled. According to the DOJ press release, the individual and other defendants used multiple shell entities they controlled to apply for financial assistance under PPP and for Economic Injury Disaster Loans (EIDL) through the Small Business Administration and falsified Internal Revenue Service (IRS) tax forms submitted to lenders. Altogether, the defendants wrongfully obtained over $3 million in loan proceeds.[9]

The Department of Treasury (the ''Department'' or ''Treasury'') is committed to increasing transparency in the U.S. financial system and strengthening the U.S. AML/CFT framework. Deputy Secretary of the Treasury Wally Adeyemo noted in November 2021 that ''[w]e are already taking concrete steps to fight [. . .] corruption and make the U.S. economy—and the global economy—more fair. Among the most crucial of these steps is our work on beneficial ownership reporting. Kleptocrats, human rights abusers, and other corrupt actors often exploit complex and opaque corporate structures to hide and launder the proceeds of their corrupt activities. They use these shell companies to hide their true identities and the illicit sources of their funds. By requiring beneficial owners—that is, the people who actually own or control a company—to disclose their ownership, we can much better identify funds that come from corrupt sources or abusive means.''[10] As he further emphasized in December 2021, ''[c]orruption thrives in the financial shadows—in shell corporations that disguise owners' true identities, in offshore jurisdictions with lax anti-money laundering regulations, and in complex structures that allow the wealthy to hide their income from government authorities . . . . For too long, corrupt actors have made their home in the darkest corners of the global financial system, stashing the profits of their illegitimate activities in our blind spots. A major component of our anti-corruption work is about changing that—shining a spotlight on these areas and using what we find to deter and go after corruption.''[11]

Earlier this year, the Department issued the 2022 Illicit Financing Strategy.[12] One of the priorities identified in the 2022 Illicit Financing Strategy is the need to increase transparency and close legal and regulatory gaps in the U.S. AML/CFT framework.[13] This priority, and the supporting goals, emphasize the vulnerabilities posed by the abuse of legal entities, including the use of front and shell companies, which can enable a wide range of illicit finance threats: drug trafficking, fraud, small-sum funding of domestic violent extremism, and illicit procurement and sanctions evasion in support of weapons of mass destruction proliferation by U.S. adversaries. The strategy reflects a broader commitment to protect the U.S. financial system from the national security threats enabled by illicit finance, especially corruption. The Department's approach to combatting corruption will make our economy—and the global economy—stronger, fairer, and safer from criminals and national security threats.

The Department's continued work to fight corruption includes implementing the Corporate Transparency Act (CTA), which was enacted as part of the Anti-Money Laundering Act of 2020 in the National Defense Authorization Act for Fiscal Year 2021.[14] In December 2021, building on an earlier Advance Notice of Proposed Rulemaking (ANPRM), FinCEN published a Notice of Proposed Rulemaking (NPRM)[15] to give the public an opportunity to review and comment on a proposed rule implementing the CTA's provisions requiring entities to report information about their beneficial owners and the individuals who created the entity (together, beneficial ownership information or BOI). FinCEN explained that the proposed rule would help protect the U.S. financial system from illicit use by making it more difficult for bad actors to conceal their financial activities through entities with opaque ownership structures. FinCEN also explained that the proposed reporting obligations would provide essential information to law enforcement and others to help prevent corrupt actors, terrorists, and proliferators from hiding money or other property in the United States.

U.S. efforts to collect BOI will lend U.S. support to the growing international consensus to enhance beneficial ownership transparency, and will spur similar efforts by foreign jurisdictions. At least 30 countries have already implemented some form of central register of beneficial ownership information, and more than 100 countries, including the United States, have committed to implementing beneficial ownership transparency reforms.[16]

After carefully considering all public comments, FinCEN is now issuing final

Force (Mar. 16, 2022), available at *https://home.treasury.gov/news/press-releases/jy0659.*

[7] Treasury, *Russian Elites, Proxies, and Oligarchs Task Force Joint Statement* (June 29, 2022), available at *https://home.treasury.gov/news/press-releases/jy0839.*

[8] DOJ, Office of Public Affairs, *Defendant Pleads Guilty to Stealing $24 Million in COVID–19 Relief Money Through Fraud Scheme that Used Synthetic Identities* (Jun. 29, 2021), available at *https://www.justice.gov/usao-sdfl/pr/defendant-pleads-guilty-stealing-24-million-covid-19-relief-money-through-fraud-scheme.*

[9] DOJ, Office of Public Affairs, *Member of $3M COVID–19 Loan Fraud Conspiracy Sentenced* (Jul. 8, 2022), available at *https://www.justice.gov/usao-edva/pr/member-3m-covid-19-loan-fraud-conspiracy-sentenced.*

[10] *Remarks by Deputy Secretary of the Treasury Wally Adeyemo at the Partnership to Combat Human Rights Abuse and Corruption* (Nov. 8, 2021), available at *https://content.govdelivery.com/accounts/USTREAS/bulletins/2fb38f8.*

[11] *Remarks by Deputy Secretary of the Treasury Wally Adeyemo on Anti-Corruption at the Brookings Institution* (Dec. 6, 2021), available at *https://home.treasury.gov/news/press-releases/jy0516.*

[12] *2022 Illicit Financing Strategy, supra* note 3.

[13] *Id.* pp. 7–13.

[14] The CTA is Title LXIV of the William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021, Public Law 116–283 (Jan. 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.

[15] 86 FR 69920 (Dec. 8, 2021).

[16] *See https://www.openownership.org/en/map/* for a graphic identifying these countries.

regulations regarding the reporting of beneficial ownership information. The regulations carefully balance the need to protect and strengthen U.S. national security, while minimizing the burden on small businesses and reporting entities. Specifically, the regulations implement the CTA's requirement that reporting companies submit to FinCEN a report containing their BOI. As required by the CTA, these regulations are designed to minimize the burden on reporting companies, particularly small businesses, and to ensure that the information collected is accurate, complete, and highly useful. The regulations will help protect U.S. national security, provide critical information to law enforcement, and promote financial transparency. This final rule implementing the CTA's beneficial ownership reporting requirements represents the culmination of years of efforts by Congress, Treasury, national security and law enforcement agencies, and other stakeholders to bolster corporate transparency by addressing U.S. deficiencies in beneficial ownership transparency noted by the Financial Action Task Force (FATF),[17] Congress, law enforcement, and others. The regulations address, among other things: who must file; when they must file; and what information they must provide. Collecting this information and providing access to law enforcement, the intelligence community, regulators, and financial institutions will diminish the ability of illicit actors to obfuscate their activities through the use of anonymous shell and front companies. In developing the proposed regulation, FinCEN aimed to minimize burdens on reporting companies, including small businesses, to the extent practicable. FinCEN estimates that it would cost the majority of reporting companies $85.14 to prepare and submit an initial BOI report.

II. Background

A. Beneficial Ownership of Entities

i. Overview

Legal entities such as corporations, limited liability companies, and partnerships, and legal arrangements like 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, and generate investments, and they 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 to enable those who threaten U.S. national security to access and transact in the U.S. economy. The United States is a popular jurisdiction for legal entity formation because of the ease with which a legal entity can be created, the minimal amount of information required to do so in most U.S. states,[18] and the investment opportunities the United States presents. The number of legal entities currently operating in the United States is difficult to estimate with certainty, but Congress recently found that more than two million corporations and limited liability companies are being created under the laws of the states each year.[19] According to Global Financial Integrity, a policy organization focused on addressing illicit finance and corruption, more public and anonymous corporations are created in the United States than in any other jurisdiction.[20] 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 in the tens of millions.[21]

The United States does not currently have a centralized or complete store of information about who owns and operates legal entities within the United States. The data readily available to law enforcement are limited to the information required to be reported when a legal entity is created at the state or Tribal level, unless an entity opens an account at a financial institution required to collect certain BOI pursuant to the Customer Due Diligence (CDD) Rule.[22] Though state- and Tribal-level entity formation laws vary, most jurisdictions do not require the identification of an entity's individual beneficial owners at or after the time of formation. Additionally, the vast majority of states require little to no disclosure of contact information or other information about an entity's officers or others who control the entity.[23]

ii. Benefits of BOI Reporting

Access to BOI reported under the CTA would significantly aid efforts to protect the U.S. financial system from illicit use. It would impede illicit actors' ability to use legal entities to conceal proceeds from criminal acts that undermine U.S. national security and foreign policy interests, such as corruption, human smuggling, drug and arms trafficking, and terrorist financing. For example, BOI can add critical data to financial analyses in law enforcement and tax investigations. It can also provide essential information to the intelligence and national 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

[17] 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.*

[18] For simplicity, in the remainder of this preamble 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.

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

[20] Global Financial Integrity, *The Library Card Project: The Ease of Forming Anonymous Companies in the United States* (March 2019) (''GFI Report''), available at *https://gfintegrity.org/report/the-library-card-project/.* 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.*

[21] In the regulatory analysis later in this final rule, FinCEN estimates that there will be at least 32.6 million ''reporting companies'' (entities that meet the core definition of a ''reporting company'' and are not exempt) in existence when the proposed rule becomes effective.

[22] 31 CFR 1010.230. Even then, any BOI a financial institution collects is not systematically reported to any central repository.

[23] *See* CTA, Section 6402(2) (''[M]ost or all States do not require information about the beneficial owners of corporations, limited liability companies, or other similar entities formed under the laws of the State''); U.S. Government Accountability Office, *Company Formations: Minimal Ownership Information Is Collected and Available* (Apr. 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* (Jun. 2019), available at *https://www.nass.org/sites/default/files/company%20formation/nass-business-entity-info-collected-june2019.pdf.*

money in the United States through anonymous shell or front companies.[24] Broadly, and critically, BOI is crucial to identifying linkages between potential illicit actors and opaque business entities, including shell companies. Shell companies are typically non-publicly traded corporations, limited liability companies, or other types of entities that have no physical presence beyond a mailing address, generate little to no independent economic value,[25] and generally are created without disclosing their beneficial owners. Shell companies can be used to conduct financial transactions while concealing true beneficial owners' involvement.

In 2021, some of the principal authors of the CTA in the Senate and U.S. House of Representatives wrote to the Department, explaining 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 . . . [To do 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.'' [26] 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.'' [27] The integration of BOI reported pursuant to the CTA with the current data collected under the BSA, and other relevant government data, is expected to significantly further efforts to identify illicit actors and combat 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, including 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.[28]

As described in the preamble to the NPRM, for more than two decades FinCEN and the broader Treasury Department have been raising awareness about the role of shell companies, the way they can be used to obfuscate beneficial ownership, and their role in facilitating criminal activity—pointing out, for example, that shell companies have enabled the movement of billions of dollars across borders by unknown actors and have facilitated money laundering or terrorist financing.

FinCEN took its first major regulatory step toward identifying beneficial owners when it initiated the 2016 CDD rulemaking process in March 2012 by issuing an ANPRM,[29] followed by an NPRM in August 2014.[30] FinCEN finalized the CDD Rule in May 2016, and financial institutions began collecting beneficial ownership information under the 2016 CDD Rule in May 2018.[31] The 2016 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 2016 CDD Rule noted that, among other things, BOI collected by financial institutions pursuant to the 2016 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 the Department's broad strategy to enhance financial transparency of legal entities.[32]

In December 2016, the FATF issued an 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. AML/CFT regime.[33] 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.'' [34] Following publication of the 2016 FATF Report, the Assistant Attorney General for the Criminal Division and Acting Assistant Attorney General for the National Security Division at the Department of Justice emphasized 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.'' [35]

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

[25] FinCEN Advisory, FIN–2017–A003, *Advisory to Financial Institutions and Real Estate Firms and Professionals* (Aug. 22, 2017), p. 3, 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* (Nov. 2006), p. 4, available at *https://www.fincen.gov/sites/default/files/shared/LLCAssessment_FINAL.pdf.*

[26] 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* (Nov. 3, 2021), available at *https://financialservices.house.gov/uploadedfiles/11.04_waters_brown_maloney_letter_on_cta.pdf* (emphasis in original).

[27] *Id.*

[28] *See* 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 (Sept. 24, 2019) (''For 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.''), available at *https://www.fincen.gov/news/speeches/prepared-remarks-fincen-director-kenneth-blanco-delivered-federal-identity-fedid.*

[29] 77 FR 13046 (Mar. 5, 2012).

[30] 79 FR 45151 (Aug. 4, 2014).

[31] 81 FR 29397 (May 11, 2016).

[32] 81 FR 29399–29402 (May 11, 2016).

[33] *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.*

[34] *Id.* at 153.

[35] DOJ, 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*

Continued

While the 2016 CDD Rule increased transparency by requiring covered financial institutions to collect a legal entity customer's BOI at the time of an account opening, it did not address the collection of BOI at the time of a legal entity's creation. BOI collected at the time of a legal entity's creation provides additional insight into the original beneficial owners of the entity.

Following the issuance of the 2016 FATF Report, officials in the Department and at the Department of Justice remained committed to working with Congress on beneficial ownership legislation that would require companies to report adequate, accurate, and current BOI at the time of a legal entity's creation. In addition, between initial congressional efforts to require beneficial ownership reporting through the Senate-proposed 2008 Incorporation Transparency and Law Enforcement Assistance Act, and the 2016 FATF Report, predecessor legislation to the CTA 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) followed the 2016 FATF Report. In November 2017 testimony before the Senate Judiciary Committee, Deputy Assistant Secretary of the Treasury Jennifer Fowler, head of the U.S. FATF delegation at the time of 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 2016 CDD Rule was an important step forward, more work remained to be done with Congress to find a solution that would involve collecting BOI when a legal entity is created.[36]

Over the years, federal officials have 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 BOI 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.'' [37] In December 2019, then-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.'' [38] He also highlighted how this gap had been addressed in part through the 2016 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.'' [39]

The Department has consistently emphasized the importance of addressing the risks posed by the lack of comprehensive beneficial ownership reporting, including in the 2018 and 2022 National Money Laundering Risk Assessments, and in the 2018 and 2020 National Strategies for Combating Terrorist and Other Illicit Financing (''2018 Illicit Financing Strategy'' and ''2020 Illicit Financing Strategy'' respectively).[40] In the 2018 National Money Laundering Risk Assessment, the Department highlighted cases in which shell and front companies in the United States were used to disguise the proceeds of Medicare and Medicaid fraud, trade-based money laundering, and drug trafficking, among other crimes.[41] In its 2022 National Money Laundering Risk Assessment, Treasury reiterated that ''bad actors consistently use a number of specific structures to disguise criminal proceeds, and U.S. law enforcement agencies have had no consistent way to obtain information about the beneficial owners of these entities. The ease with which companies can be incorporated under state law and the lack of information generally required about the company's owners or activities lead to limited transparency. Bad actors take advantage of these lax requirements to set up shell companies . . .'' [42]

The Department's 2018 Illicit Financing Strategy flagged the use of shell companies by Russian organized crime groups in the United States, as well as by the Iranian government to obfuscate the source of funds and hide its involvement in efforts to generate revenue.[43] The 2020 Illicit Financing Strategy cited as one of the most significant vulnerabilities of the U.S. financial system the lack of a requirement to collect BOI at the time of legal entity creation and after changes in ownership.[44] Building on the two previous Illicit Financing Strategies, Treasury emphasized in its 2022 Illicit Financing Strategy that combating the pernicious impact of illicit finance in the U.S. financial system, economy, and society is integral to strengthening U.S. national security and prosperity. The 2022 Illicit Financing Strategy observed, however, that while the United States has made substantial progress in addressing this challenge, the U.S. AML/CFT regime must adapt to an evolving threat environment, and structural and technological changes in

Laundering and Counter-Terrorist Financing Leadership, but Action is Needed on Beneficial Ownership (Dec. 1, 2016), available at *https://www.justice.gov/archives/opa/blog/financial-action-task-force-report-recognizes-us-anti-money-laundering-and-counter.*

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

[37] DOJ, *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 Feb. 6, 2018, p. 3, available at *https://www.judiciary.senate.gov/imo/media/doc/02-06-18%20Day%20Testimony.pdf.*

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

[39] *Id.*

[40] *See, e.g.,* Treasury, *National Money Laundering Risk Assessment* (2022), p. 37, available at *https://home.treasury.gov/system/files/136/2022-National-Money-Laundering-Risk-Assessment.pdf;* Treasury, *National Money Laundering Risk Assessment* (2018), pp. 28–30, available at *https://home.treasury.gov/system/files/136/2018NMLRA_12-18.pdf;* 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;* Treasury, *National Strategy for Combating Terrorist and Other Illicit Financing* (2020), pp. 13–14, 27, 34, available at *https://home.treasury.gov/system/files/136/National-Strategy-to-Counter-Illicit-Financev2.pdf.*

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

[42] Treasury, *National Money Laundering Risk Assessment* (Feb. 2022), p. 37, available at *https://home.treasury.gov/system/files/136/2022-National-Money-Laundering-Risk-Assessment.pdf.*

[43] 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.*

[44] *2020 Illicit Financing Strategy,* p. 12, available at *https://home.treasury.gov/system/files/136/National-Strategy-to-Counter-Illicit-Financev2.pdf.*

financial services and markets. In order to succeed in this critical fight, the 2022 Illicit Financing Strategy detailed how the United States is striving to strengthen laws, regulations, processes, technologies, and people so that the U.S. AML/CFT regime remains a model of effectiveness and innovation, noting that implementing the BOI reporting and collection regime envisioned by the CTA was essential to closing legal and regulatory gaps that allow criminals and other illicit actors to move funds and purchase U.S. assets anonymously.[45]

Congress recognized the threat posed by shell companies and other opaque ownership structures when it passed the CTA as part of the broader Anti-Money Laundering Act of 2020 (the ''AML Act'').[46] Congress explained that among 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.''[47] 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 revenue and transfer funds in support of illicit conduct.[48] Additionally, the 2021 United States Strategy on Countering Corruption emphasized the importance of curbing illicit finance and strengthening efforts to fight corruption and other illicit financial activity, including through greater beneficial ownership transparency.[49]

iii. National Security and Law Enforcement Implications

Although many legal entities are used for legitimate purposes, they can also be misused to facilitate criminal activity or threaten our national security. As Congress explained in the CTA, ''malign 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, harming the national security interests of the United States and allies of the United States.''[50]

For example, such legal entities are used to obscure the proceeds of bribery and large-scale corruption, money laundering, narcotics offenses, terrorist or proliferation financing, and human trafficking, and to conduct other illegal activities, including sanctions evasion. The ability of bad 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. The Department 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.''[51] The Drug Enforcement Administration also recently highlighted that drug trafficking organizations (DTOs) commonly 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.[52]

The NPRM highlighted specific examples of significant criminal investigations into the use of shell companies to launder money or evade sanctions imposed by the United States. For example, the Department of Justice, the Federal Bureau of Investigation (FBI), and the IRS Criminal Investigation Division investigated the alleged misappropriation of more than $4.5 billion in funds belonging to 1Malaysia Development Berhad that were intended to be used to improve the well-being of the Malaysian people but were allegedly laundered through a series of complex transactions and shell companies with bank accounts located in the United States and abroad. Included in the forfeiture complaint were multiple luxury properties in New York City, Los Angeles, Beverly Hills, and London, mostly titled in the name of shell companies.[53] In another case, 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 California, Canada, Hong Kong, and the United

[45] *See generally,* Treasury, *National Strategy for Combating Terrorist and Other Illicit Financing* (May 2022), available at *https://home.treasury.gov/system/files/136/2022-National-Strategy-for-Combating-Terrorist-and-Other-Illicit-Financing.pdf.*

[46] 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).

[47] *Id.* section 6002(5)(A)–(B).

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

[49] The White House, *United States Strategy on Countering Corruption* (Dec. 2021), pp. 10–11, available at *https://www.whitehouse.gov/wp-content/uploads/2021/12/United-States-Strategy-on-Countering-Corruption.pdf.*

[50] CTA, section 6402(3).

[51] Treasury, *National Strategy for Combating Terrorist and Other Illicit Financing* (2020), pp. 13–14, available at *https://home.treasury.gov/system/files/136/National-Strategy-to-Counter-Illicit-Financev2.pdf.* The 2022 Illicit Financing Strategy noted that ''[t]he passage of the CTA was a critical step forward in closing a long-standing gap and strengthening the U.S. AML/CFT regime'' and that ''[a]ddressing the gap in collection at the time of entity formation is the most important AML/CFT regulatory action for the U.S. government.'' Treasury, *National Strategy for Combating Terrorist and Other Illicit Financing* (May 2022), p. 8, available at *https://home.treasury.gov/system/files/136/2022-National-Strategy-for-Combating-Terrorist-and-Other-Illicit-Financing.pdf.*

[52] Drug Enforcement Administration, *2020 Drug Enforcement Administration National Drug Threat Assessment* (''DEA 2020 NDTA'') (2020), pp. 87–88, available at *https://www.dea.gov/sites/default/files/2021-02/DIR-008-21%202020%20National%20Drug%20Threat%20Assessment_WEB.pdf.*

[53] 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.*

Arab Emirates.[54] 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 to disguise hundreds of millions of dollars' worth of transactions on behalf of Iran.[55] 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.[56]

Although the U.S. Government has tools capable of obtaining some BOI, 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. As Congress explained in the CTA, ''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.'' [57]

As Kenneth A. Blanco, then-Director of FinCEN, observed in testimony to the U.S. Senate Committee on Banking, Housing and Urban Affairs, 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.'' [58] Steven M. D'Antuono, Acting Deputy Assistant Director of the FBI's Criminal Investigative Division, elaborated on these difficulties, testifying 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.'' [59] He explained that if investigators obtain ownership records, they 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.'' [60] By layering ownership and financial transactions, professional launderers and others involved in illicit finance can effectively delay investigations into their activity.[61] D'Antuono 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.[62]

More recently, in July 2022, Andrew Adams, the Director of the DOJ-led Task Force KleptoCapture,[63] remarked that ''as a core challenge to be met through [the Task Force KleptoCapture's] work—past action means that the fruits of corruption that might be found in the United States are likely to be buried deep beneath layers of sham owners and shell companies—while the most obvious and ostentatious forms of kleptocracy will be located outside of the United States, as the world has already seen.'' [64] He also noted that ''the primary obstacle to identifying illicit proceeds and the actors for whom, and by whom, those funds are transmitted, is the use by criminal networks of shell corporations found in multiple, often offshore and relatively non-cooperative, jurisdictions . . . . The Task Force is therefore directing particular attention to attempts by foreign individuals and entities, including off-shore shell corporations, to move funds through correspondent accounts at U.S. banks.'' [65]

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, a 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. An investigator also needs to determine the proper recipient of the subpoena and coordinate service, which raises additional complications in cases where excessive layers of corporate structures hide the identity of the ultimate beneficial owners. In some cases, however, BOI records still may not be attainable because they do not exist. For example, because most states do not require the disclosure of BOI when creating or registering a legal 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 either.

FinCEN's other existing regulatory tools also have limitations. The 2016 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.[66] But the rule

[54] DOJ (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* (Mar. 19, 2021), available at *https://www.justice.gov/usao-cdca/pr/iranian-nationals-charged-conspiring-evade-us-sanctions-iran-disguising-300-million.*

[55] *Id.*

[56] *Id.*

[57] CTA, Section 6402(4).

[58] 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.*

[59] 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.*

[60] *Id.*

[61] *Id.*

[62] *Id.*

[63] Task Force KleptoCapture is an interagency law enforcement endeavor led by Justice Department prosecutors and dedicated to enforcing the sweeping sanctions and export restrictions that the United States has imposed, along with allies and partners, in response to Russia's unprovoked military invasion of Ukraine. DOJ, *Statement of Andrew Adams, Director, KleptoCapture Task Force, U.S. Department of Justice, Before the Committee on the Judiciary, United States Senate, for a Hearing Entitled ''KleptoCapture: Aiding Ukraine through Forfeiture of Russian Oligarchs' Illicit Assets* (Jul. 19, 2022), p. 1, available at *https://www.judiciary.senate.gov/imo/media/doc/Testimony%20-%20Adams%20-%202022-07-19.pdf.*

[64] *Id.* at 2.

[65] *Id.* at 4.

[66] The 2016 CDD Rule NPRM contained a requirement that covered financial institutions conduct ongoing monitoring to maintain and update customer 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

provides only a partial solution: The information about beneficial owners of certain U.S. entities seeking to open an account at a covered financial institution only covers beneficial owners of a legal entity at the time a new account is opened, is not reported to the Government, and is not immediately available to law enforcement, intelligence, or national security agencies. Other FinCEN authorities offer only temporary and targeted tools and do not provide law enforcement or others the ability to quickly and effectively follow the money.

Shell companies, in particular, demonstrate how critical it is for investigators to have access to a centralized database of BOI. 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.'' [67] 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 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.'' [68] He continued, ''[t]hese 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.'' [69]

During the same hearing in front of the Senate's Committee on Banking, Housing, and Urban Affairs in May 2019, Acting Deputy Assistant Director 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.'' [70]

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.'' [71] 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 us all at risk.'' [72] 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.'' [73]

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).

[67] Treasury, *National Strategy for Combating Terrorist and Other Illicit Financing* (2020), p. 14, available at *https://home.treasury.gov/system/files/136/National-Strategy-to-Counter-Illicit-Financev2.pdf.*

[68] 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.*

[69] *Id.*

[70] 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.*

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

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

[73] 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-*

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The Department's 2022 National Money Laundering Risk Assessment noted that lack of timely access to BOI remained a key weakness within the U.S. AML/CFT regulatory regime and emphasized that the ''new U.S. requirements for the disclosure of beneficial ownership information to the federal government, once fully implemented, are expected to help facilitate law enforcement investigations and make it more difficult for illicit actors to hide behind corporate entities registered in the United States or those foreign entities registered to do business in the United States.'' [74] As Secretary Yellen underscored last year, there are ''far too many financial shadows in America that give corruption cover'' and the Department ''must play a leading role'' in shining a spotlight on them, increasing transparency in beneficial ownership information, and making it more difficult to hide and launder ill-gotten gains.[75]

iv. 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 Group of Seven (G7), Group of Twenty (G20),[76] FATF, and the Egmont Group,[77] the global community has worked to establish a set of mutual standards to enhance beneficial ownership transparency across 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 2016 FATF report concluded that ''lack of timely access to adequate, accurate and current beneficial ownership (BO) information remains one of the fundamental gaps in the U.S. context'' and ''overall, the measures to prevent the misuse of legal persons are inadequate.'' [78] The report identified the lack of beneficial ownership as one among a number of higher-risk issues deserving special focus in the report, and referenced prior U.S. risk assessment processes that concluded it was a ''serious deficiency.'' [79] As noted in the 2021 United States Strategy on Countering Corruption, because the United States ''is the largest economy in the international financial system, [it] bears particular responsibility to address [its] own regulatory deficiencies, including in [its] AML/CFT regime, in order to strengthen global efforts to limit the proceeds of corruption and other illicit financial activity.'' [80] The Administration has further recognized the importance of such global efforts by committing support through the Presidential Initiative for Democratic Renewal to bolster partners' beneficial ownership transparency frameworks.[81]

The current lack of a federal BOI reporting requirement and centralized BOI database makes the United States a jurisdiction of choice for those wishing to create shell companies that hide their ultimate beneficiaries. This makes it easier for bad actors to launder illicit proceeds through the U.S. economy. 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 lack of a centralized BOI reporting obligation to park their ill-gotten gains in a stable jurisdiction, thereby exposing the United States to serious national security threats.

Congress recognized that the lack of a centralized BOI reporting requirement in the United States constitutes a weak link in the integrity of the global financial system. In passing the CTA, Congress explained that federal legislation providing for the collection of BOI was ''needed to . . . bring the United States into compliance with international [AML/CFT] standards.'' [82] 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 many jurisdictions, including the United States, still have work to do to meet the standards for beneficial ownership transparency. As the FATF noted in its recent public statement regarding amendments to its standard on beneficial ownership transparency of legal entities, ''[m]utual [e]valuations show a generally insufficient level of effectiveness in combating the misuse of legal persons for money laundering and terrorist financing globally, and [show] that countries need to do more to implement the current FATF standards promptly, fully and effectively.'' [83] Establishing the requirements to report BOI to a centralized database at FinCEN is a critical step in the Department's decades-long efforts to protect the U.S. and global financial systems from illicit

c8254509a6f3/13D55FBEE293CAAF52B7317C5CA7E44C.senators-cta-comment-letter-05.04.2021.pdf.

[74] Treasury, *National Money Laundering Risk Assessment* (2022), pp. 35–37, available at *https://home.treasury.gov/system/files/136/2022-National-Money-Laundering-Risk-Assessment.pdf.*

[75] Remarks by Secretary of the Treasury Janet L. Yellen at the Summit for Democracy (Dec. 9, 2021), available at *https://home.treasury.gov/news/press-releases/jy0524.*

[76] *See, e.g., United States G–8 Action Plan for Transparency of Company Ownership and Control* (Jun. 2013), available at *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* (Jul. 2013), available at *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.*

[77] FATF 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.

[78] *See* FATF, *Anti-Money Laundering and Counter-Terrorist Financing Measures United States Mutual Evaluation Report* (2016), pp. 4, 10, available at *https://www.fatf-gafi.org/media/fatf/documents/reports/mer4/MER-United-States-2016.pdf.*

[79] *Id.,* at 22.

[80] The White House, *United States Strategy on Countering Corruption* (Dec. 2021), p. 11, available at *https://www.whitehouse.gov/wp-content/uploads/2021/12/United-States-Strategy-on-Countering-Corruption.pdf.*

[81] *See* The White House, *Fact Sheet: Announcing the Presidential Initiative for Democratic Renewal* (Dec. 9, 2021), *available at https://www.whitehouse.gov/briefing-room/statements-releases/2021/12/09/fact-sheet-announcing-the-presidential-initiative-for-democratic-renewal/* (announcing support ''[t]o enhance partner countries' ability to build resilience against kleptocracy and illicit finance, including by supporting beneficial ownership disclosure, strengthening government contracting and procurement regulations, and improving anti-corruption investigation and disruption efforts'').

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

[83] FATF, Public Statement on Revisions to R.24 (Mar. 4, 2022), available at *https://www.fatf-gafi.org/publications/fatfrecommendations/documents/r24-statement-march-2022.html.*

actors and to combat money laundering and corruption.

B. The Corporate Transparency Act

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 to the extent practicable. The section requires certain types of domestic and foreign entities, called ''reporting companies,'' to submit specified BOI to FinCEN. In certain circumstances, FinCEN is authorized to share this BOI with government agencies, financial institutions, and financial regulators, subject to appropriate protocols.[84] The statutory requirement for reporting companies to submit BOI takes effect ''on the effective date of the regulations'' implementing the reporting obligations.[85] The section provides that reporting companies created or registered to do business after the effective date will need to submit the requisite information to FinCEN at the time of creation or registration, while reporting companies in existence before the effective date will have a specified period in which to report.[86] The CTA's reporting requirements generally apply to smaller, more lightly regulated entities that are less likely to be subject to any other BOI reporting requirements. By contrast, the CTA exempts certain categories of larger, more heavily regulated entities from its reporting requirements.

The statute prescribes the basic outline of reporting requirements. It requires reporting companies to submit to FinCEN, for each beneficial owner and each individual who files an application to form a domestic entity or register a foreign entity to do business (company applicant), four pieces of information—the individual's full legal name, date of birth, current residential or business street address, and a unique identifying number from an acceptable identification document (*e.g.,* a passport)—or the individual's FinCEN identifier. This readily accessible information should not be unduly burdensome for individuals to produce, or for reporting companies to collect and submit to FinCEN.[87] A FinCEN identifier is a unique identifying number that FinCEN will issue to individuals or reporting companies upon request, subject to certain conditions. For individuals, FinCEN will issue a FinCEN identifier if an individual submits to FinCEN the same four pieces of identifying information as would be required in a BOI report.[88] For reporting companies, FinCEN will issue a FinCEN identifier only at or after the time the reporting company files an initial report.[89] As explained in Section III.B.vi. below, FinCEN proposed to allow a reporting company may use an individual or entity's FinCEN identifier in lieu of providing individual pieces of BOI in certain instances, and FinCEN has decided to revise and resubmit that portion of the proposed rule for additional public comment.[90]

Given the sensitivity of the reportable information, the CTA imposes strict confidentiality, security, and access restrictions on the data FinCEN collects. FinCEN is authorized to disclose reported BOI in limited circumstances to a statutorily defined group of governmental authorities and financial institutions. Federal agencies, for example, may only obtain access to BOI when it will be used in furtherance of a national security, intelligence, or law enforcement activity.[91] For state, local, and Tribal law enforcement agencies, ''a court of competent jurisdiction'' must authorize the agency to seek BOI as part of a criminal or civil investigation.[92] Foreign government access is limited to requests made by foreign law enforcement agencies, prosecutors, and judges in specified circumstances.[93] With the consent of the reporting company, FinCEN may also disclose BOI to financial institutions to help them comply with customer due diligence requirements under applicable law.[94] Finally, a financial institution's regulator can obtain BOI that has been provided to a financial institution it regulates for the purpose of performing regulatory oversight that is specific to that financial institution.[95]

To ensure that BOI collected under 31 U.S.C. 5336 is only used for these statutorily described purposes, the CTA includes specific restrictions, requirements, and security protocols, and it authorizes FinCEN to implement this security framework. FinCEN intends to address the regulatory requirements related to access to information reported pursuant to the CTA through a future rulemaking process ahead of this final rule's effective date.

The CTA also requires that FinCEN revise portions of the 2016 CDD Rule within one year after the effective date of the BOI reporting rule.[96] In particular, the CTA directs FinCEN to rescind the specific beneficial ownership identification and verification requirements of 31 CFR 1010.230(b)–(j), while retaining the general requirement for financial institutions to identify and verify the beneficial owners of legal entity customers under 31 CFR 1010.230(a).[97] The CTA 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 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 to reduce unnecessary or duplicative burdens on financial institutions and legal entity customers.[98]

FinCEN intends to revise the 2016 CDD Rule[99] through a future rulemaking process that will provide the public with an opportunity to comment on the effect of the final provisions of the BOI reporting rule on financial institutions' customer due diligence obligations. The rulemaking process will also allow FinCEN to reach informed conclusions about how to align the 2016 CDD Rule with this final rule and the future BOI access rule.[100]

Finally, the CTA requires the Inspector General of the Department of the Treasury to provide public contact information to receive external comments or complaints regarding the beneficial ownership information notification and collection process or regarding the accuracy, completeness, or timeliness of such information.[101] The Department of the Treasury's Office of Inspector General has established the following email inbox to receive such

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

[85] 31 U.S.C. 5336(b)(5).

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

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

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

[89] *Id.*

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

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

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

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

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

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

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

[97] CTA, Section 6403(d)(2) (''[T]he Secretary of the Treasury shall rescind paragraphs (b) through (j) of section 1010.230 of title 31 . . . upon the effective date of the revised ruled promulgated under this subsection. . . . Nothing in this section may be construed to authorize the Secretary of the Treasury to repeal the requirement that financial institutions identify and verify beneficial owners of legal entity customers under section 1010.230(a) . . . .'').

[98] CTA, Section 6403(d)(1)(A)–(C).

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

[100] The access rule would implement 31 U.S.C. 5336(c) and explain which parties would have access to BOI, under what circumstances, as well as how the parties would generally be required to handle and safeguard BOI.

[101] *See* 31 U.S.C. 5336(h)(4).

comments or complaints: *CorporateTransparency@oig.treas.gov.*

C. Notice of Proposed Rulemaking

In December 2021, building on a previously issued ANPRM,[102] FinCEN published an NPRM proposing BOI reporting requirements. The proposed regulations described 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 would include 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 would be any entity created under the law of a foreign jurisdiction that is registered to do business within the United States.

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

The proposed regulations more specifically identified who would be a beneficial owner and who would be a company applicant. Under the proposed rule, a beneficial owner would include any individual who meets at least one of two criteria: (1) the individual exercises substantial control over the reporting company; or (2) the individual owns or controls at least 25 percent of the ownership interests of a reporting company. The proposed regulations defined the terms ''substantial control'' and ''ownership interest'' and proposed rules for determining whether an individual owns or controls 25 percent of the ownership interests of a reporting company. The proposed regulations also, following the CTA, defined five types of individuals exempt from the definition of beneficial owner.

In addition, the proposed regulations defined who would be a company applicant. In the case of a domestic reporting company, a company applicant would be the individual who files the document that creates the entity. In the case of a foreign reporting company, a company applicant would be the individual who files the document that first registers the entity to do business in the United States. The proposed regulations specified that anyone who directs or controls the filing of an entity creation or registration document by another would also be a company applicant.

Under the proposed regulations, the time at which a report must be filed would depend on: when the reporting company was created or registered; and whether the report is an initial report, an updated report providing new information, or a report correcting erroneous information in a previously filed report of any kind. Domestic reporting companies that were created, or foreign reporting companies that were registered to do business in the United States for the first time, before the effective date of the final regulations would have one year from the effective date of the final regulations to file their initial 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 of creation or first registration, respectively. If there was a change in the information previously reported to FinCEN under these regulations, reporting companies would have 30 calendar days to file an updated report under the proposed regulations. Finally, if a reporting company had filed information that was inaccurate at the time of filing, the proposed regulations would have required the reporting company 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 described the specific information that a reporting company would need to submit to FinCEN about: the reporting company itself, and each beneficial owner and company applicant. The required information about the reporting company would include basic information identifying the reporting company.[103] The required information about beneficial owners and company applicants would include items of information specifically required by the CTA—the name, date of birth, address, and document number of a specified type of identification document—for each beneficial owner and company applicant. In lieu of providing specific required information about an individual, the reporting company could provide a unique identifier issued by FinCEN called a FinCEN identifier. The proposed regulations described how a FinCEN identifier would be obtained and when it could be used. The proposed regulations also encouraged, but did not require, reporting companies to provide taxpayer identification numbers (TINs) of beneficial owners and company applicants to support efforts by government authorities and financial institutions to prevent money laundering, terrorist financing, and other illicit activities such as tax evasion.

Finally, the proposed regulations elaborated on the CTA's penalty provisions. The CTA makes it 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 described persons that would be subject to this provision and what acts (or failures to act) would constitute a violation.

D. The Beneficial Ownership Secure System (BOSS)

The CTA directs the Secretary of the Treasury to maintain BOI ''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. . . .'' [104] To implement this requirement, FinCEN has been developing the Beneficial Ownership Secure System (BOSS) to receive, store, and maintain BOI. One commenter asked whether FinCEN intends to allow reporting companies to submit BOI reports in paper form, and if so, whether FinCEN would adopt a ''postmark rule,'' whereby a BOI report would be considered timely filed if the envelope is properly addressed, has enough postage, is postmarked, and is deposited in the mail by the due date. FinCEN expects that BOI reports will be submitted electronically through an online interface, but understands there may be certain circumstances in which a reporting company is unable to file through this interface. FinCEN is continuing to consider how to address such cases, as well as other modalities for filing through the online interface, such as ''batch'' filing or other means.

The BOSS will be secured to a Federal Information Security Management Act ''High'' compliance level, the highest information security protection level

[102] 86 FR 69920 (Dec. 8, 2021).

[103] As FinCEN explained in the NPRM, without this information, ''FinCEN would have no ability to determine the entity that is associated with each reported beneficial owner or company applicant,'' frustrating Congress's purpose in enacting the CTA. 86 FR 69920, 69931 (Dec. 8, 2021).

[104] CTA, Section 6402(7).

under the Act. FinCEN intends to issue proposed regulations governing the disclosure of BOI to authorized recipients and requiring, among other things, that recipients maintain the highest security safeguards practicable. As required by the CTA, the proposed regulations will ensure that Treasury has taken all appropriate steps to safeguard BOI and to disclose BOI only for authorized purposes consistent with the CTA.[105]

E. Comments Received

In response to the NPRM, FinCEN received over 240 comments. Submissions came from a broad array of individuals and organizations, including Members of Congress, government officials, groups representing small business interests, corporate transparency advocacy groups, the financial industry and trade associations representing its members, law enforcement representatives, and other interested groups and individuals.

In general, many commenters expressed support for the CTA and the proposed regulations. These commenters viewed the proposed regulations as an important step toward protecting the integrity of the U.S. financial system and a significant contribution to efforts to combat illicit financial activity and global corruption more broadly. These commenters supported the approach taken in the proposed rule, of avoiding loopholes and opportunities for evasion, and a few of these commenters expressed concerns about the illicit finance risks associated with certain types of legal entities. Supportive commenters agreed that FinCEN's proposed approach of defining certain key terms broadly, including in some ways that differ from the 2016 CDD Rule, is aligned with the statutory text and congressional intent in passing the CTA.

FinCEN agrees with many commenters that implementation of a beneficial ownership registry that is highly useful to law enforcement and the intelligence community will help to prevent bad actors from hiding behind opaque corporate structures, including anonymous shell and front companies, and from using such structures to generate funding to finance their illicit activities. While many legal entities are used for legitimate purposes, they can also be misused, as highlighted in the NPRM, and as Congress recognized in the CTA.[106] Moreover, existing regulatory and law enforcement tools, such as grand jury subpoenas, witness interviews, foreign legal assistance requests, and the 2016 CDD Rule, have limitations in enabling law enforcement and national security officials to identify the professional launderers and corrupt officials that hide behind anonymous shell companies.

Other commenters expressed general opposition to the proposed regulations, arguing that the proposed regulations were too broad, too complex, and too difficult and costly to understand and comply with. Some commenters claimed that the proposed regulations deviated significantly from what Congress intended. Many of these commenters expressed concerns that the proposed regulations, if finalized without significant changes, would impose numerous and costly reporting requirements on small businesses and would create privacy and security concerns with respect to personally identifiable information. A number of these commenters suggested that FinCEN adopt a narrower approach, or circumscribe the scope of the reporting obligations. Some also argued that FinCEN should replicate or closely track definitions from the 2016 CDD Rule.

Many commenters, regardless of their overarching views, suggested a range of modifications to the proposed regulations to enhance clarity, refine policy expectations, and ensure technical accuracy.

FinCEN carefully reviewed and considered each comment submitted. Many specific proposals will be discussed in more detail in Section III below. FinCEN's analysis has been guided by the statutory text, including the statutory obligations to collect information in a manner that ensures that it will be highly useful for national security, intelligence, and law enforcement activities and other authorized purposes, and minimize burdens on reporting entities, including small businesses.[107]

In implementing this final rule, FinCEN took into account the many comments and suggestions intended to clarify and refine the scope of the rule and to reduce burdens on reporting entities, including small businesses, to the greatest extent practicable. FinCEN further notes that implementation of the final rule will require additional engagement with stakeholders to ensure a clear understanding of the rule's requirements and timeframes, including through additional guidance and FAQs, help lines, and other engagement—both directly with affected entities and through state governments and other third parties. FinCEN also intends to work within Treasury and with interagency partners to inform risk assessments, advisories, guidance documents, and other products that relate to the illicit finance risks associated with legal entities.

III. Discussion of Final Rule

FinCEN is adopting the proposed rule largely as proposed, but with certain modifications that are responsive to comments received and intended to minimize unnecessary burdens on reporting companies, including by clarifying reporting obligations. The final rule extends to 30 days the deadline for newly created entities to file initial reports, and it sets the same 30-day deadline for entities filing updated and corrected reports. The final rule also removes the requirement that entities created before the effective date of the regulations report company applicant information. Newly created entities will still be required to report company applicant information, but they will not be required to update it. FinCEN believes that these changes will relieve burdens on reporting companies unique to company applicant information, while still ensuring that the database is highly useful. In addition, FinCEN has made a number of modifications to the ownership interest and substantial control definitions to enhance clarity and to facilitate compliance by reporting companies. FinCEN has made certain other clarifying and technical revisions throughout the rule. We discuss specific comments, modifications, revisions, and the shape of the final rule section by section here.

A. Timing of Reports

The CTA authorizes FinCEN to establish the filing deadlines for both reporting companies in existence prior to the effective date of the regulations and reporting companies created or registered on or after the effective date. It also requires reporting companies to update and correct information submitted to FinCEN, and authorizes FinCEN to specify the timing of such submissions.

Proposed 31 CFR 1010.380(a) set forth those timeframes. It required initial reports to be filed by existing entities within one year of the effective date and by newly created or registered entities within 14 days of their creation or registration. It also required corrected reports to be filed within 14 days after a reporting company becomes aware or

[105] All reports filed under the CTA and its implementing regulations will be exempt from search and disclosure under the Freedom of Information Act (FOIA). *See* 31 U.S.C. 5319; 31 CFR 1010.960.

[106] CTA, Section 6402.

[107] 31 U.S.C. 5336(b)(4)(B).

has reason to know that reported information is inaccurate, and it required updated reports to be filed within 30 days of a change in information requiring an update. Commenters supported the timeframes, or opposed them, based on a range of considerations, including the need to establish a highly useful database for law enforcement, the burdens on reporting companies, legal concerns about FinCEN's authority to prescribe timeframes shorter than the statutorily specified maximum periods, and practical considerations regarding the availability of certain types of information. Commenters also suggested possible alternatives, including aligning beneficial ownership reporting deadlines with other pre-existing filing obligations, such as annual federal tax reporting obligations or in connection with state corporate filing requirements and renewals. Some commenters also asked that the final rule include a mechanism for reporting companies to request extensions.

The final rule adopts in many respects the proposed rule's framework but makes certain changes with respect to timeframes and timing events to address practical considerations identified by commenters. Importantly, the final rule harmonizes the reporting timeframes at 30 days for initial reports by newly created or registered entities, updated reports, and corrected reports. A number of commenters advocated for these harmonized and extended timeframes to ease administration for reporting companies and service providers that may support reporting companies.

i. Timing of Initial Reports

Proposed Rule. For newly created or registered companies, proposed 31 CFR 1010.380(a)(1)(i) specified that a domestic reporting company created on or after the effective date of the regulation shall file a report within 14 calendar days of the date it was created as specified by a secretary of state or similar office. Proposed 31 CFR 1010.380(a)(1)(ii) specified 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.

For entities created or registered before the effective date of the regulations, the CTA requires filing of initial reports ''in a timely manner,'' but ''not later than'' two years after the effective date of the final regulations.[108] Proposed 31 CFR 1010.380(a)(1)(iii) required 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.

Comments Received. Commenters provided general comments in support or opposition to the reporting timeframes, and specific comments on initial reporting timeframes for existing and newly created entities, as well as updated and corrected reports.

With respect to the initial reporting period for entities created after the effective date of the final rule (''newly-created entities''), some commenters supported the 14-day period for filing an initial report by newly-created domestic entities given that a large number of entities covered by the rule should have a limited number of owners and therefore have access to the required reporting information. Other commenters noted a range of concerns with the initial 14-day filing period for newly-created or -registered entities, whether domestic or foreign. For example, some commenters explained that there are varying state practices regarding registration and company formation, and that it can take several days to receive confirmation of the filing or registration from the secretary of state. Other commenters noted that a significant amount of time can elapse between company creation and the registration of alternative names through which the company is engaging in business (''d/b/a names''), and that there can be delays in receiving a TIN from the IRS, including for foreign employer identification numbers. Many of these commenters suggested alternative timeframes to accommodate these circumstances, ranging from 30 days to 6 months.

With respect to entities in existence at the time of the effective date of the regulation, some commenters supported the one-year reporting period as a reasonable timeframe, while others opposed it. Commenters raised a range of concerns, and in particular, noted that the adequacy of the one-year reporting period depended on a range of considerations, including FinCEN's ability to develop an outreach strategy and publicize the new reporting requirements to stakeholders; the readiness of the BOSS to accept filings with data privacy and security safeguards; the availability of FinCEN hotline assistance, tools, guidance, and FAQs to aid reporting company compliance; and the ability of reporting companies to collect information from beneficial owners and company applicants. Some commenters maintained that the two-year maximum period specified in the CTA should apply, and that this timeframe would be important for businesses with limited administrative capacity to implement. Commenters also suggested longer periods than the two-year period in the CTA, as well as shorter periods than the one-year period described in the proposed rule in order to ensure that reported information would be useful to financial institutions with CDD Rule obligations. Lastly, comments indicated that previously exempt entities should have 90 days or longer to submit an initial report after the qualifying conditions for the exemption lapse. One commenter, for example, asserted that existing entities that are exempt as of the effective date but that cease to be exempt during the first year after the effective date because they no longer meet the exemption criteria should receive the benefit of the one-year filing period for existing entities.

Final Rule. With respect to newly created entities, the final rule revises proposed 31 CFR 1010.380(a)(1)(i) and (ii), for domestic and foreign reporting companies, respectively, to extend the reporting timeframes to 30 days and to provide greater specificity regarding the timing of the filing of initial reports. For existing entities, however, the final rule adopts the proposed 31 CFR 1010.380(a)(1)(i) without any changes. For existing entities, the final rule requires those reporting companies that exist at the time of the effective date to submit an initial report within one year of the effective date.

For newly created entities, the final rule now specifies a trigger for the reporting period for an initial report. That trigger is the earlier of the date on which the reporting company receives actual notice that its creation (or registration) has become effective; or 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 or the foreign reporting company has been registered. In this way, the final rule takes into consideration concerns raised by commenters that the date on which a filing is made with a secretary of state or similar office to create a reporting company is not as useful a reference point as other indicators for starting the time period in which to file an initial report. The final rule also takes into account varying state filing practices, including automated systems in certain states, as notification of creation or registration is provided to newly created

[108] 31 U.S.C. 5336(b)(1)(B).

companies in some states, while in others no actual notice of creation or registration is provided and newly created companies receive public notice through state records. FinCEN believes that individuals that create or register reporting companies will have an incentive to stay apprised of creation or registration notices or publications given their interest in establishing an operating business or engaging in the activity for which the reporting company is created. FinCEN will consider additional guidance or FAQs, as appropriate, if there is a need to clarify how the final rule applies to specific factual circumstances that may arise from particular state creation or registration practices.

The final rule also extends the filing period for initial reports from 14 days to 30 days in response to comments that describe potential impediments to the ability of reporting companies to meet the proposed timeframe. Comments expressed concerns about state confirmation of filings to create or form a reporting company, the timeframes necessary to register d/b/as at the county level, and timeframes required to receive a TIN from the IRS or from foreign authorities, and they raised questions about how to report persons with substantial control given that senior officer or other positions might not be filled promptly. An expanded 30-day timeframe will provide more time to reporting companies to acquire TINs and other identifying information, which is critical to the ability of FinCEN to distinguish reporting companies from one another, which in turn is necessary to create a highly useful database. FinCEN believes that this 30-day timeframe for initial reports will provide enough time for reporting companies to resolve various issues after initial creation, including obtaining necessary information and identifying their beneficial owners with sufficient time to file an initial report.

For existing entities, the final rule requires those reporting companies that exist at the time of the effective date to submit an initial report within one year of the effective date. FinCEN disagrees with commenters who questioned its legal authority to set a one-year deadline. The CTA requires the reports to be filed ''in a timely manner, and not later than 2 years after the effective date,'' in accordance with regulations to be prescribed by FinCEN.[109] Accordingly, the statute establishes a maximum time period of not later than two years, but it does not preclude FinCEN from adopting a deadline shorter than two years. FinCEN carefully considered the benefit to law enforcement and national security agencies that might be derived from periods shorter than 2 years, as well as the burdens imposed on reporting companies to identify beneficial ownership information. These burdens are further addressed in the Regulatory Analysis in Section V below. Given that the effective date of these regulations is January 1, 2024, and existing reporting companies will not be required to file information until January 1, 2025, FinCEN believes that there will be sufficient time for reporting companies to identify and report beneficial ownership information.

Moreover, as discussed in greater detail in Section III.B.iv.b. below, in order to reduce burdens on reporting companies in meeting the one-year deadline, the final rule at 31 CFR 1010.380(b)(2)(iv) no longer requires domestic reporting companies created prior to the effective date, or foreign reporting companies registered prior to the effective date, to submit company applicant information. Rather, these reporting companies will only need to report the fact that they were created or registered prior to the effective date and the information required for reporting companies and beneficial owners. This should help to minimize any burdens associated with a one-year deadline.

In addition, some commenters said it was unclear how the initial reporting rules would apply to entities that are exempt as of the effective date but that cease to be exempt during the first year after the effective date because they no longer meet exemption criteria. FinCEN does not believe changes to the regulatory text are necessary to address this issue but notes that, in such circumstances, previously exempt entities will receive the benefit of the longer of the two applicable time frames, *i.e.,* the remaining days left in the one-year filing period or the 30 calendar day period reflected in section 1010.380(a)(1)(iv).[110] FinCEN will consider guidance or FAQs to respond to any additional particular factual circumstances that may arise.

FinCEN also takes note of the many comments stating that FinCEN outreach to secretaries of state and stakeholders, FinCEN's readiness to accept filings through its beneficial ownership information database, and the availability of FinCEN assistance will all make a one-year timeframe easier to comply with. FinCEN is actively developing the database so that it will be ready to accept filings as of the effective date and intends to conduct outreach to communicate clearly the rules and expectations for reporting companies and other stakeholders.

A number of commenters stated that the final rule should include a mechanism for reporting companies to request extensions, or provide an automatic extension period, to address a range of challenges such as the calculation of ownership interests after transfers of membership interests, locating beneficial owners or company applicants, particularly in foreign countries, or other circumstances. While the final rule does not establish a specific mechanism for reporting companies to seek extensions to the filing periods for initial, updated, or corrected reports, FinCEN may consider providing guidance or relief as appropriate, depending on the facts and circumstances.

ii. Timing of Updated and Corrected Reports

Proposed Rule. Proposed 31 CFR 1010.380(a)(2) required 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. Proposed 31 CFR 1010.380(a)(2)(i) specified that if a reporting company subsequently becomes eligible for an exemption from the reporting requirement after the filing of its initial report, this change will be deemed a change requiring an updated report.

Proposed 31 CFR 1010.380(a)(2)(ii) provided 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 the deceased beneficial owner is settled. This proposed rule sought to clarify that a reporting company is not required to immediately 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

[109] 31 U.S.C. 5336(b)(1)(B).

[110] For example, if there is an event that causes an exempt entity that was in existence on the effective date to no longer meet any exemption criteria on the 350th day after the effective date, that entity would have 30 days in which to file its initial report; in contrast, if the same entity were to no longer meet any exemption criteria on the 330th day after the effective date, it would have 35 days to file its initial report.

the intestacy laws of a jurisdiction within the United States or through a testamentary disposition, the reporting company is required to file an updated report at that time, removing the deceased former beneficial owner and, to the extent appropriate, identifying any new beneficial owners.

With respect to the correction of inaccuracies in reports, proposed 31 CFR 1010.380(a)(3) required 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. Proposed 31 CFR 1010.380(a)(3) also specified that a corrected report filed under this paragraph within this 14-day period shall be deemed to satisfy the safe harbor provision at 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.

Comments Received. With respect to updated reports, some commenters supported the 30-day timeframe to update reports as necessary to maintain an effective database, and other commenters asked for the application of a consistent timeframe across all the reporting requirements to streamline and facilitate compliance processes. Other comments suggested that the timeframe for updating reports be extended to 60 days, 90 days, or one year, and that the frequency or number of updated reports be limited or coincide with preexisting filing obligations of reporting companies (*e.g.,* annual tax return filing, annual state filings). Some commenters also argued that there should be no requirement to file an updated report unless the reporting company becomes aware of a change in beneficial owners or beneficial ownership information. Lastly, some commenters argued that FinCEN does not have authority to shorten the timeframe to file updates to less than the one-year maximum specified in the CTA. These commenters pointed to a CTA requirement that the Secretary of the Treasury evaluate the necessity and benefit of a shorter deadline for updates than the one-year maximum.

With respect to deceased beneficial owners, commenters sought clarification of the application of the rule in specific circumstances. Commenters asked FinCEN to clarify the updated reporting timeframe if a reporting company is unable to acquire information about a successor within 30 days. In addition, commenters asked whether a report would be required if ownership interests of the deceased beneficial owner are diluted through distribution to a number of beneficiaries. Lastly, commenters suggested that the rule applicable to deceased beneficial owners should not apply to individuals who are beneficial owners based on substantial control.

With respect to corrected reports, a number of commenters noted that the timeframe of 14 days to submit a corrected report after becoming aware of an inaccuracy was too short and advocated for longer time periods, including 21 days or 30 days after the inaccuracy is discovered. Other commenters suggested longer time periods, including up to 90 days, because businesses that discover inaccuracies would need to consult with their attorney or advisor to assess an appropriate way forward.

There were also a few comments regarding the CTA's provision that provides a safe harbor to reporting companies that discover an inaccuracy and file a corrected report within 90 days of the filing of an initial report. Some commenters requested clarification that the 90 day period be applied broadly to all reporting companies correcting any inaccurate reports. Other commenters argued that small businesses acting in good faith should have an opportunity to correct a violation and come into compliance, without fines or enforcement actions. Some commenters urged FinCEN to amend the proposed rule to clarify that the CTA's safe harbor applies to all reports that are corrected within 90 days from the date on which a reporting company becomes aware or has reason to know that required information contained in any report it filed with FinCEN was inaccurate.

A number of comments also requested clarification and asked whether specific proposed scenarios would trigger an initial or updated report filing requirement (*e.g.,* company termination). Multiple commenters noted that the timeline for an updated report should be based on when a company becomes aware of the need to submit an update.

Final Rule. The final rule adopts proposed 31 CFR 1010.380(a)(2) regarding the 30-day timeframe to submit updated reports, but makes certain clarifying edits and revises the proposed rule to exclude updates on company applicants. This exclusion is intended to reduce unnecessary burdens associated with the updating requirement, and is discussed in more detail in Section III.B.v. below in connection with 31 CFR 1010.380(b)(3), which describes the contents of updated reports. For corrected reports, the final rule at 31 CFR 1010.380(a)(3) revises the timeframe for the submission of reports to correct inaccuracies to 30 days, but otherwise adopts the language of the proposed rule with clarifying edits.

Aligning the updated and corrected report deadlines with the initial reporting deadline for new entities will help to harmonize the reporting timelines, provide substantial time to obtain required information, and minimize potential confusion. A more standardized reporting timeline for these reports should make compliance easier for reporting companies.

For updated reports, as stated in the proposed rule, FinCEN considers that keeping the database current and accurate is essential to keeping it highly useful, and that allowing reporting companies to wait to update beneficial ownership information for more than 30 days—or allowing them to report updates on only an annual basis—could cause a significant degradation in accuracy and usefulness of the database. FinCEN has considered that a more frequent updating requirement may entail more burdens than a less frequent one, but reporting companies can be expected to know who their beneficial owners are, and it is reasonable to expect that reporting companies will update the information they report when it changes. Moreover, keeping the requirement to update reports at 30 days is consistent with international practice on the collection of beneficial ownership information.[111] For example, in the United Kingdom, changes to beneficial ownership information for companies required to register with the UK registry must be reported within 15 days, and in France, companies and certain other types of associations and groups must file updates to beneficial ownership information within one month.[112] Similarly, in the jurisdiction of Jersey, a major center for corporate formation, such updates must be filed

[111] *See* World Bank, *Beneficial ownership: increasing transparency in a simple way for entrepreneurs* (July 2, 2021), Figure 2, available at *https://blogs.worldbank.org/developmenttalk/beneficial-ownership-increasing-transparency-simple-way-entrepreneurs* (noting that in most economies, the timeframe to disclose beneficial ownership information is from 21 to 30 days after a change in ownership).

[112] *See* Financial Action Task Force, *United Kingdom Mutual Evaluation Report* (December 2018) (p. 211), available at *https://www.fatf-gafi.org/media/fatf/documents/reports/mer4/MER-United-Kingdom-2018.pdf;* Financial Action Task Force, *France Mutual Evaluation Report* (May 2022) (p. 280), available at *https://www.fatf-gafi.org/media/fatf/documents/reports/mer4/Mutual-Evaluation-France-2022.pdf.*

within 21 days.[113] The Financial Action Task Force, the international standard-setting body for AML/CFT, has viewed longer timelines to update beneficial ownership information critically, and inconsistent with the FATF standard that beneficial ownership information of legal persons be up-to-date.[114] As noted, FinCEN has eliminated the requirement that reporting companies update company applicant information, which should reduce compliance burdens. FinCEN has provided an alternative cost analysis for less frequent report updates in in the Regulatory Analysis in Section V, below.

FinCEN disagrees with commenters who questioned its authority to impose a 30-day deadline based on the CTA's requirement that the Secretary of the Treasury evaluate the necessity and benefit of a deadline shorter than the one-year maximum. The CTA requires updates to be filed ''in a timely manner, and not later than 1 year'' after there is a change with respect to any reported information, in accordance with regulations to be prescribed by FinCEN.[115] The statutory one-year timeframe is plainly a maximum, and it does not preclude FinCEN from prescribing a deadline shorter than one year. Although the CTA requires ''a review to evaluate'' the necessity and benefit of a period shorter than one year, the deadline for this review notably does not run from the effective date of the final rule, and nothing in the CTA requires that the final rule be issued with a one-year deadline before the review occurs.[116] In adopting a 30-day deadline, FinCEN has evaluated the necessity of a shorter updating period, the benefit to law enforcement and national security officials of such shorter period, and the burden on reporting companies.[117] FinCEN has also consulted with the Departments of Justice and Homeland Security.[118]

With respect to deceased beneficial owners, 31 CFR 1010.380(a)(2)(iii) adopts the proposed rule's requirement that an updated report must identify new beneficial owners within 30 days of the settlement of the estate of the deceased beneficial owner, either through the operation of the intestacy laws of a jurisdiction within the United States or through a testamentary disposition. The final rule, however, clarifies that an updated report must be filed if the deceased individual was a beneficial owner ''by virtue of property interests or other rights subject to transfer upon death,'' not solely because the deceased beneficial owner owned or controlled 25 percent of the reporting company's ownership interests. Finally, for the purposes of determining whether any of the successors to the deceased beneficial owner continue to be beneficial owners of the reporting company, no special rules apply, and the reporting company will need to apply the beneficial owner definition to assess whether any successor is a beneficial owner by virtue of the new property interests or rights.

With respect to corrected reports, the final rule extends the filing deadline from 14 to 30 days in order to provide reporting companies with adequate time to obtain and report the correct information. The final rule reflects the concerns raised by commenters that the 14-day timeframe may not provide sufficient time for reporting companies to conduct adequate due diligence, consult with advisors, or conduct appropriate outreach, while at the same time providing a sufficiently short timeframe to ensure that errors are corrected quickly so that the database will remain ''accurate, complete, and highly useful.''

In addition, for the sake of clarity, the final rule adds 31 CFR 1010.380(a)(2)(iv), which provides that when a reporting company has previously reported information with respect to a parent or legal guardian of a minor child in lieu of the minor child's information, pursuant to 31 CFR 1010.380(b)(2)(ii) and (d)(3)(i), a reporting company must submit an updated report when a minor child attains the age of majority.

FinCEN stresses that the requirement to update reports in 31 CFR 1010.380(a)(2)(i) is triggered only where there is ''any change with respect to required information previously submitted to FinCEN concerning a reporting company or its beneficial owners.'' Consistent with this defined requirement, FinCEN has added 31 CFR 1010.380(a)(2)(v) to the final rule to clarify that reporting companies are required to update the image of the identification document from which the unique identification number is obtained only when there is a change in information to be reported in 31 CFR 1010.380(b)(1)(ii)(A–D) on the identification document. Other changes in the information contained in the identification document—for example, with respect to expiration dates or personal characteristics other than the information enumerated in 31 CFR 1010.380(b)(1)(ii)(A–D)—do not require the submission of an updated image. Because the image is used to corroborate the information required to be reported in 31 CFR 1010.380(b)(1)(ii)(A–D), the image only needs to be updated when such information changes. FinCEN highlights this clarification to ensure that reporting companies avoid additional burdens of obtaining images of identification documents in circumstances that are not relevant for the purposes of the final rule.

31 U.S.C. 5336(h)(3)(C) provides a safe harbor to any person that has reason to believe that any report submitted by the person contains inaccurate information and voluntarily and promptly, and consistent with FinCEN regulations, submits a report containing corrected information no later than 90 days after the date on which the person submitted the inaccurate report. The CTA is clear that the safe harbor is only available to reporting companies that file corrected reports no later than 90 days after submission of an inaccurate report, and does not extend to reports corrected more than 90 days after they are filed, even if a reporting company files a correction promptly after becoming aware or having reason to know that a correction is needed.

In addition, the final rule does not adopt a good faith or other standard regarding the requirements to update or correct reports. The CTA places the reporting responsibility on reporting companies, and this responsibility includes the obligation to report accurately. The CTA also requires reporting companies to update information when it changes.

[113] *See* Financial Action Task Force, *Best practices on beneficial ownership for legal persons* (October 2019) (p. 43), available at *https://www.fatf-gafi.org/media/fatf/documents/Best-Practices-Beneficial-Ownership-Legal-Persons.pdf.*

[114] *See* Financial Action Task Force, *Germany Mutual Evaluation Report* (August 2022) (p. 285), available at *https://www.fatf-gafi.org/media/fatf/documents/reports/mer4/Mutual-Evaluation-Report-Germany-2022.pdf* (noting that ''[t]here is no detail on the timeframes in which basic and BO information should be updated which means that registry information may not always be up-to-date.''); *See* Financial Action Task Force, *Hong Kong, China Mutual Evaluation Report* (September 2019) (p. 210–211), available at *https://www.fatf-gafi.org/media/fatf/documents/reports/mer4/MER-Hong-Kong-2019.pdf* (noting that ''a company has two months to update changes in shareholding, especially for subsequent changes, in its register (s.627 CO), which means that shareholder information may not always be accurate and up-to-date even when the intention of the underlying parties are.''). *See generally* FATF Recommendations (updated March 2022), *Interpretive Note to Recommendation 24* (p. 94), available at *https://www.fatf-gafi.org/media/fatf/documents/recommendations/pdfs/FATF%20Recommendations%202012.pdf* (''Up-to-date [beneficial ownership] information is information which is as current and up-to-date as possible, and is updated within a reasonable period (*e.g.* within one month) following any change.'').

[115] 31 U.S.C. 5336(b)(1)(D).

[116] 31 U.S.C. 5336(b)(1)(E)(iii).

[117] *See* 31 U.S.C. 5336(b)(1)(E)(ii), (iii).

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

Lastly, with respect to questions regarding the treatment of company termination or dissolution, FinCEN does not expect a reporting company to file an updated report upon company termination or dissolution. FinCEN will consider appropriate guidance or FAQs to address any other specific questions that may arise about application of the final rule to particular facts and circumstances.

B. Content, Form, and Manner of Reports

Proposed 31 CFR 1010.380(b) specified 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. It then set forth specific types of identifying information that reporting companies are required to report about themselves, their beneficial owners, and their company applicants, and identified certain additional information that a reporting company may choose to submit. Next, it outlined certain special rules for the contents of reports and specified the contents of updated or corrected reports. Finally, it set forth requirements for obtaining and using a FinCEN identifier. The final rule in large part adopts the requirements of the proposed rule, but with certain changes explained in this section.

i. Certification

Proposed Rule. Proposed 31 CFR 1010.380(b) specified that each person filing a report under that section must certify that the report is accurate and complete. This approach was based on comments to the ANPRM that discussed the potential for FinCEN to require an attestation of accuracy or other certification on either a one-time or periodic basis, including comments that argued that such a requirement would encourage reporting companies to keep their information up to date. FinCEN invited further comment on the proposal that a person filing a report pursuant to proposed 31 CFR 1010.380(b) must certify that the report is accurate and complete.

Comments Received. Commenters generally supported the certification requirement in proposed 31 CFR 1010.380(b), stating that such a requirement is consistent with the purposes of the CTA and ensures that information in the BOSS is accurate and up to date, and thus highly useful to authorized users. Commenters who opposed the requirement stated that it exceeded the scope of FinCEN's authority. They noted that the CTA already established that it was unlawful for any person to willfully provide false information, and that the certification requirement could expand a person's liability for providing inaccurate information even if the information was provided in good faith. Commenters who opposed the proposed requirement also argued that the certification ignored the standards of practice in other areas such as federal income tax returns.

Commenters generally questioned what level of due diligence was required of the person certifying the report, and observed that it would be burdensome, if not impossible, for a reporting company to certify the accuracy of the beneficial owner's or company applicant's personally identifiable information (PII). Commenters suggested changing the certification language to include various knowledge standards (*i.e.,* ''to the best of their knowledge'' or ''to the best of their knowledge after reasonable and diligent inquiry''), and one commenter urged FinCEN to decrease the penalties for certifiers who act in good faith after diligent inquiry. Commenters also recommended that third parties submitting information on behalf of a beneficial owner or reporting company should have the option to make a declaration if unable to gather information, or if information provided to the third party was incorrect. Finally, one commenter urged FinCEN to clarify which person filing the report will have the certification obligation, and to define what certification of accuracy and completeness means.

Final Rule. The final rule retains the certification requirement set out in the proposed rule, but clarifies the language to be consistent with other certification language that FinCEN uses elsewhere, which requires a certification that the reported information is ''true, correct, and complete.'' The amended certification requirement mirrors that in the Form 8300 (''Report of Cash Payments Over $10,000 in a Trade or Business'')[119] required by FinCEN and IRS. The revisions will help to ensure a consistent information certification standard for information required to be reported to FinCEN. The final rule also clarifies that the certification requirement applies to any report or application submitted to FinCEN pursuant to 31 CFR 1010.380(b), such as an application for a FinCEN ID, not just to a BOI report submitted by a reporting company.

Under the final rule, each reporting company will certify that its report or application is true, correct, and complete. FinCEN recognizes that much of the information required to be reported about beneficial owners and applicants will be provided to reporting companies by those other individuals. However, the structure of the CTA reflects a deliberate choice to place the responsibility for reporting this information on the reporting company itself. The fundamental premise of the CTA is that the reporting company is responsible for identifying and reporting its beneficial owners and applicants.[120] Inherent in that responsibility is the obligation to do so truthfully and accurately. Accordingly, FinCEN believes that it is reasonable to require reporting companies to certify the accuracy and completeness of their own reports, and it is appropriate to expect that reporting companies will take care to verify the information they receive from their beneficial owners and applicants before they report it to FinCEN. Requiring such a certification is within FinCEN's authority, which under the CTA extends to prescribing procedures and standards governing reports, and it is consistent with the CTA's direction that those procedures and standards ensure the beneficial ownership information reported to FinCEN be ''accurate'' and ''complete.''[121]

While an individual may file a report on behalf of a reporting company, the reporting company is ultimately responsible for the filing. The same is true of the certification. The reporting company will be required to make the certification, and any individual who files the report as an agent of the reporting company will certify on the reporting company's behalf.

The final rule does not adopt standards that apply to practitioners filing tax forms on a client's behalf, as these practices are dissimilar. Different roles, duties, and capacities can be subject to different requirements and different legal duties. For example, certified public accountants who practice before the IRS are subject not only to Treasury Department Circular No. 230 (Rev. 6–2014), ''Regulations Governing Practice before the Internal Revenue Service'',[122] (''Circular 230''),

[119] Form 8300 (Rev. August 2014) (*irs.gov*). The IRS and FinCEN jointly administer the Form 8300 pursuant to companion statutory authorities, and regulations issued by both agencies. For the IRS' authority, *see* 26 U.S.C. 6050I and 26 CFR 1.6050I–1; for FinCEN's authority, *see* 31 U.S.C. 5331 and 31 CFR 1010.330.

[120] 31 U.S.C. 5336(b)(1)(A).

[121] 31 U.S.C. 5336(b)(4).

[122] Treasury Department Circular No. 230 (Rev. 6–2014), ''Regulations Governing Practice before the Internal Revenue Service,'' Catalog Number 16586R, 31 CFR Subtitle A, Part 10, published (Jun. 12, 2014).

but also to applicable state laws and board of accountancy rules or regulations, which may be more exacting or stringent in some respects than Circular 230. Furthermore, legal requirements for audit work are different from those for tax return preparation and other accounting services. Similarly, lawyers are subject to the Model Rules of Professional Conduct as adopted in their licensing jurisdiction, but those rules do not fully align with Circular 230. Accordingly, FinCEN considers the standard established by the certification requirement to be the appropriate standard for beneficial ownership filings under this rule.

FinCEN considered applying a knowledge or due diligence standard to the certification as recommended by certain commenters. Given that the CTA places the responsibility on reporting companies to identify their beneficial owners, however, the final rule retains a version of the standard articulated in the proposed rule. Some commenters expressed concern about the certification in light of the civil and criminal penalties for willfully providing false or fraudulent beneficial ownership information.[123] Any assessment as to whether false information was willfully filed would depend on all of the facts and circumstances surrounding the certification and reporting of the BOI, but as a general matter, FinCEN does not expect that an inadvertent mistake by a reporting company acting in good faith after diligent inquiry would constitute a willfully false or fraudulent violation.

ii. Information To Be Reported Regarding Reporting Companies

In order to ensure that each reporting company can be identified, proposed 31 CFR 1010.380(b)(1)(i) required each reporting company to provide: (1) the full name of the reporting company, (2) any trade name or ''doing business as'' name of the reporting company, (3) the business street address of the reporting company, (4) the state or Tribal jurisdiction of formation of the reporting company (or for a foreign reporting company, the state or Tribal jurisdiction where such company first registers), and (5) an IRS TIN of the reporting company (or, where a reporting company has not yet been issued a TIN, either a Dun & Bradstreet Data Universal Numbering System (DUNS) Number or a Legal Entity Identifier (LEI)).

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. Nevertheless, the CTA's express requirement to identify beneficial owners and applicants ''with respect to'' 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.'' Without a reporting company's identifying information, the users of the database could not determine what entities an individual owns or controls. For example, the database might show that a known drug trafficker is a beneficial owner, but it would not identify the specific entities that he owns and uses to launder money. Conversely, an investigator who knows an entity is being used to launder money would be unable to query the database to identify who owns and controls the entity. This would frustrate Congress's express purposes in enacting the CTA and would amount to an absurd result.[124] The statutory authority to prescribe regulations for identifying the beneficial owners and applicants of reporting companies thus must necessarily include the authority to require identifying information about the reporting companies themselves.

This argument was stated in the NPRM. While some commenters questioned the statutory basis for requiring such information, many expressly agreed with the proposed approach, recognizing that some basic identifying information about a reporting company would be necessary for the database to be useful. Nevertheless, FinCEN recognizes that this authority has limits. In this vein, some commenters noted that FinCEN should minimize the information reporting companies must disclose about themselves. Other commenters suggested that FinCEN require additional information, including details about company formation and reporting companies' corporate structure and chain of ownership. This type of information, however, is not needed to reliably identify a reporting company or associate a beneficial owner or company applicant with a reporting company.

a. Company Name

Proposed Rule. Proposed 31 CFR 1010.380(b)(1)(i)(A)–(B) required a reporting company to report the full name of the reporting company, as well as any trade or d/b/a names of the reporting company.

Comments Received. Commenters generally supported the proposed requirement but asked for additional clarification regarding the scope of the requirement. A number of commenters requested that FinCEN require the submission of the full ''legal'' name to avoid confusion between similarly named entities or with operational names. Other commenters expressed concerns about the requirement that reporting companies also submit d/b/a or trade names and the potential burdens associated with reporting a large number of related names. To minimize this burden, commenters suggested that this reporting requirement be narrowed to d/b/a or trade names that a reporting company would file or register with a relevant government authority.

Final Rule. FinCEN adopts the proposed rule, but clarifies the ambiguity in the proposed rule regarding the meaning of ''full name'' and adopts the use of ''full legal name'' to ensure that reporting companies submit the legal name used to establish the entity. As noted in the NPRM, companies with similar names may be mistaken for each other due to misspellings or other errors and FinCEN must have enough specific information about a reporting company to enable accurate searching of the BOI database. FinCEN considered requiring reporting companies to report only trade or d/b/a names that are filed or registered with a relevant government authority. However, FinCEN believes such a limitation would be insufficient to identify reporting companies that do business under names that they do not register with government authorities. Requiring all trade or d/b/a names, regardless of whether they are registered, will ensure that law

[123] 31 U.S.C. 5336(h)(1).

[124] *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.''); *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'').

enforcement and national security agencies are able to associate businesses with their legal entities and beneficial owners, while also helping to avoid confusion between different entities.

b. Company Address

Proposed Rule. Proposed 31 CFR 1010.380(b)(1)(i)(C) required a reporting company to report the business street address of the reporting company.

Comments Received. In the proposed rule, FinCEN recognized comments to the ANPRM that raised concerns that a reporting company might 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, and sought comment on these concerns. A number of comments stated the importance of disclosing the street address or physical location of a reporting company, and offered suggestions to provide greater precision to the concept of business street address. One commenter suggested, for example, ''street address of the reporting company's principal place of business'' in lieu of ''business street address'' because an entity might have multiple business street addresses. Some commenters also noted that FinCEN should not permit the use of P.O. boxes because it would increase ambiguity about the location of a reporting company and could allow it to hide its location and activities.

Other commenters noted challenges, particularly during the COVID pandemic, to limiting reporting to a business street address. Some commenters noted that businesses often operate from a residential address or that many internet companies have no established physical presence. Along these lines, some commenters indicated that businesses often use P.O. boxes where there is no fixed business to report or where a business is newly formed. Additional comments provided variations and asked to permit disclosure of the company formation agent's address, a physical street address where records are located, or a care of address. In addition, one commenter asked that the reporting requirement align with the Customer Identification Program (CIP) reporting requirements. Lastly, a number of commenters noted the need for clarification regarding the disclosure of business street address for foreign reporting companies, including whether such companies needed to report a U.S. address, a foreign address, or both.

Final Rule. FinCEN adopts the proposed rule with certain changes that clarify the business street address to be reported. In particular, the final rule clarifies that for a reporting company with a principal place of business in the United States, the reporting company should provide the street address of that principal place of business. FinCEN is adopting the suggestion made by many commenters to require the address of the ''principal place of business'' given the potential ambiguity of ''business street address'' in cases in which a business may have multiple locations. For a reporting company with a principal place of business outside of the United States, the final rule specifies that the reporting company should provide the street address of the primary location in the United States where the reporting company conducts business. This requirement to provide a U.S. address will help to ensure that law enforcement and national security agencies are able to associate a reporting company that operates principally outside of the United States with the location where it operates in the United States. FinCEN considered comments suggesting that in such instances, FinCEN should either require or allow for voluntary reporting of a foreign address, in addition to a U.S. address, but determined that limiting the address requirement to a street address in the United States would be sufficient for identifying reporting companies and would minimize burdens associated with this reporting requirement. FinCEN believes that having a U.S. address for a reporting company would also enable law enforcement to reach a point of contact more effectively in case of an inquiry or investigation.

As noted in the proposed rule, the requirement to report the street address of a business is not satisfied by reporting a P.O. box or the address of a company formation agent or other third party. FinCEN believes that reporting such third-party addresses would create opportunities for illicit actors to create ambiguities or confusion regarding the location and activities of a reporting company and thereby undermine the objectives of the beneficial ownership reporting regime.

The comments, however, indicate that there are likely to be a variety of situations in which there may be questions about the principal place of business of a reporting company, and FinCEN will consider future guidance or FAQs to address such questions.

c. Jurisdiction of Formation and Registration

Proposed Rule. Proposed 31 CFR 1010.380(b)(1)(i)(D) required the reporting company to report its state or Tribal jurisdiction of formation, or for a foreign reporting company, the state or Tribal jurisdiction where such company first registers.

Comments Received. A number of commenters noted that this information would provide clarity about the entity and create opportunities for federal, state, and local law enforcement collaboration. With respect to foreign reporting companies, a few commenters suggested that FinCEN also require the jurisdiction of formation, noting that this information would be valuable for cross-border investigations and would help facilitate mutual legal assistance requests.

Final Rule. The final rule adopts and expands the proposed rule in order to ensure that the information in the beneficial ownership database can be used to reliably identify a reporting company. The final rule requires foreign reporting companies, in addition to domestic reporting companies, to report their jurisdiction of formation. This jurisdiction may be a State, Tribal, or foreign jurisdiction of formation. For foreign reporting companies, the final rule retains the requirement that the company report the State or Tribal jurisdiction where it first registers. In the case of foreign reporting companies, the jurisdiction of formation and the place of registration in the United States are necessary to ensure that reporting companies can be accurately identified, as different companies with similar names may be formed or registered in different jurisdictions. FinCEN also believes the jurisdiction of formation for foreign reporting companies will be highly useful for law enforcement and national security agencies in conducting cross-border investigations, and that there will be no additional burden associated with this reporting requirement since companies typically know their jurisdiction of formation.

d. Company Identification Numbers

Proposed Rule. Proposed 31 CFR 1010.380(b)(1)(i)(E) required the reporting company to submit a TIN (including an Employer Identification Number (EIN)), or where a reporting company has not yet been issued a TIN, a DUNS number or an LEI. The proposed rule recognized that a TIN is furnished on all tax returns, statements, and other tax-related documents filed with the IRS and stated an expectation that the requirement would entail limited burdens. At the same time, FinCEN recognized 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, and so

provided for the use of a DUNS or LEI number as an alternative. FinCEN also asked if there was additional information FinCEN should collect to identify a reporting company.

Comments Received. Commenters expressed a range of views about the requirement to report a TIN, or in the alternative, a DUNS or LEI identifier. A number of commenters supported the requirement to report a TIN, and suggested that a reporting company be required to report a TIN later, if it initially reports a DUNS or LEI but subsequently receives a TIN. One commenter asked that the final rule be made consistent with the CIP Rule, and therefore the 2016 CDD Rule, and proposed as an alternative allowing reporting companies to provide evidence of an application by a reporting company for a TIN, permitting the disclosure of a DUNS or LEI on a voluntary basis. A couple of commenters suggested either requiring a state identification number (*i.e.,* a unique identification number provided by the State of formation or registration) or accepting this number in lieu of a TIN, DUNS, or LEI; one of these commenters noted that a state identification number would be more easily accessible than a DUNS or LEI. Other commenters opposed this requirement entirely, stating that FinCEN either lacks the authority to require such identification information or that submission of this information would be too burdensome. One commenter expressed support for collecting this information on a voluntary basis only.

Final Rule. The final rule adopts the requirement in the proposed rule to provide a TIN, but it simplifies the alternatives. Reporting companies will not be allowed to report a DUNS or LEI in lieu of a TIN; foreign reporting companies without a TIN will be required to provide a foreign tax identification number.

While there may be some situations in which a company that is created or registered to do business in the United States will not have a TIN, the vast majority of reporting companies will have a TIN or will easily be able to obtain one. Although there may be a short lapse in time between the time of formation and the time it takes for a reporting company to apply for and receive a TIN, online applications for a TIN are returned almost immediately. Because FinCEN is extending the time for filing of an initial report under 31 CFR 1010.380(a)(1) to 30 days, FinCEN expects that reporting companies will have sufficient time to obtain a TIN before filing. FinCEN believes that a single identification number for reporting companies is necessary to ensure that the beneficial ownership registry is administrable and useful for law enforcement, to limit opportunities for evasion or avoidance, and to ensure that users of the database are able to reliably distinguish between reporting companies.[125]

While domestic companies can easily obtain a TIN, there may be situations in which a foreign company that registers in the United States is not subject to U.S. corporate income tax and has no reason to obtain a TIN. In such cases, FinCEN has modified 31 CFR 1010.380(b)(1)(i)(F) to permit a reporting company to provide a foreign tax identification number and the name of the relevant jurisdiction as an alternative. Companies operating in most foreign countries are issued a tax identification number by the authorities of that country for tax purposes. In the event that unusual situations arise in which a foreign reporting company is not able to obtain a foreign tax identification number, FinCEN will consider appropriate guidance or relief depending on the circumstances.

Finally, with respect to comments suggesting that FinCEN require reporting companies to provide a registration or similar number associated with the corporate formation application, FinCEN considered a range of options and factors on whether to include such a number, but determined that there were practical challenges. For example, it is unclear whether states issue comparable registration numbers with similar formats and therefore whether FinCEN could reliably use such a registration number due to the differences in state practices. In addition, mindful of the burdens for small companies, FinCEN was not convinced that those registration numbers are readily accessible to most companies in a manner similar to TINs.

iii. Information To Be Reported Regarding Beneficial Owners and Company Applicants

Proposed 31 CFR 1010.380(b)(1)(ii) specified the particular information required to be reported regarding beneficial owners and company applicants. Proposed 31 CFR 1010.380(b)(1)(ii) required reporting companies to identify each beneficial owner of the reporting company and each company applicant by: full legal name, date of birth, current residential or business street address, and unique identifying number from an acceptable identification document, and to provide an image of the identifying document.

Some commenters suggested that FinCEN require a wide variety of additional information to be reported about beneficial owners and applicants, such as details of an individual's ownership or control relationship with the company (*e.g.,* percentage of ownership interests, whether the relationship is through direct or indirect means) and total number of persons holding shares or interests in a company. Other commenters suggested that FinCEN require less information to be reported. Some proposed that FinCEN obtain certain information from other federal agencies such as the IRS, Citizen and Immigration Services (USCIS), or Social Security Administration (SSA), or from state and local government agencies, instead of from reporting companies. Some questioned FinCEN's authority to collect certain information not expressly specified in the statute. In addition, commenters suggested a range of modifications to the proposed rules to reduce burdens or address practical complications for reporting companies.

In general, the CTA limits the types of information FinCEN can require reporting companies to report, and the commenters suggesting that FinCEN collect many additional types of information did not identify the authority by which FinCEN could do so. As explained in the NPRM, however, FinCEN has authority to collect certain limited types of information that are not expressly specified in the statute, and FinCEN disagrees with the commenters who questioned that authority. Moreover, while FinCEN has considered the suggestion to seek information from other government agencies, the CTA requires reporting companies to submit reports to FinCEN and there are specific legal and regulatory frameworks that limit FinCEN's ability to obtain information from other agencies.[126] The discussion that follows addresses considerations relating to the specific types of information to be reported.

a. Name, DOB, and Address

Proposed Rule. For every individual who is a beneficial owner or company applicant, proposed 31 CFR 1010.380(b)(1)(ii) required the reporting company to report each individual's full legal name, date of birth, and complete current address. In the case of a company applicant who files a document to create or register a

[125] *See* note 124, *supra.*

[126] For example, 26 U.S.C. 6103 restricts the disclosure of federal tax information by the IRS to other federal agencies for other than tax purposes.

reporting company in the course of such individual's business, the proposed rule required the address to be the business street address of such business. In any other case, the proposed rule required the address to be the residential address that the individual uses for tax residency purposes.

Comments Received. With respect to the residential address, many commenters supported clarifying that the residential address should be the address an individual uses for tax purposes. Other commenters stated that such clarification was unnecessary, pointing out that FinCEN did not include it in the 2016 CDD Rule when requiring a residential address. Some commenters claimed that FinCEN does not have the authority to specify a particular type of residential address. Some commenters asserted that the concept of a residential address ''for tax residency purposes'' is not widely understood and may lead to confusion, including for foreign nationals.

Several commenters asserted that FinCEN lacks statutory authority to prescribe the particular types of addresses that may be used by beneficial owners and company applicants, claiming that the statute provides reporting companies with the choice of identifying beneficial owners and company applicants by their residential or business street address. However, many commenters supported the requirement to report business addresses for company applicants who file documents in the course of their business. With respect to the requirement that a residential address be used for all other individuals, other commenters supported FinCEN's proposed bifurcated approach of requiring a residential street address used for tax residency purposes, noting that the rule provides clarity given that an individual may have multiple addresses but typically only one residential address for tax residency purposes.

Some commenters suggested that the rule should be more specific in a variety of ways. Some asserted that it should require the street address of the U.S. headquarters or principal place of business of company applicants who file documents in the course of their business. Other commenters laid out specific scenarios and asked for clarification on whether FinCEN would require reporting of a residential or business address for a company applicant. Commenters asked FinCEN to specify whether private mailboxes, GPS coordinates, and office addresses could be used, and asked whether FinCEN would provide workarounds for individuals who frequently move and/or do not have tax residency in any jurisdiction (so-called ''tax nomads''). Some commenters noted safety concerns for victims of domestic violence and other victims whose addresses would be required to be reported, and requested clarity regarding address confidentiality programs and the reporting of alternative addresses.

Final Rule. The final rule adopts the proposed 31 CFR 1010.380(b)(1)(ii) with two changes to the address-related requirements. First, the final rule omits the requirement that the reported residential street address be the address an individual uses for tax residency purposes. FinCEN agrees with the commenters who pointed out that ''tax residency purposes'' is not sufficiently clear, particularly in light of the fact that tax residency can be established by time in a jurisdiction without any fixed residential address. Second, the final rule revises the provision to provide additional clarity: a business address is required for a company applicant ''who forms or registers an entity in the course of such company applicant's business.''

The final rule adopts the bifurcated approach in the proposed rule that required a business address for company applicants who create or register companies in the course of their business, while requiring a residential address for all other individuals, including beneficial owners. As explained in the NPRM, the statute does not prescribe when or whether one type of address is to be used in preference to another. The statute instead provides that ''[i]n accordance with regulations prescribed by the Secretary,'' a report shall identify each beneficial owner and applicant by ''residential or business street address.'' [127] The statute thus requires either a residential or a business street address, but it leaves to FinCEN's discretion the authority to prescribe the appropriate rules for addresses within those limits.

In prescribing the rules governing addresses, FinCEN considered leaving to the reporting company the choice of which address to report, but FinCEN believes that this would unduly diminish the usefulness of the reported information for national security, intelligence, and law enforcement activity. Under most circumstances, a residential street address is of greater value both for establishing the identity of an individual and as a point of contact in an inquiry or investigation. By contrast, a business address could be used by some individuals to obscure their identity or location, and multiple persons may be associated with a business address. Business addresses may be of some investigative value as points of contact in the event that an investigation requires follow-up, but such addresses are less reliable guides to a beneficial owner's identity and location than a residential address. Most identifying documents for individuals, such as driver's licenses and passports, use residential addresses rather than business addresses.

A business address, however, may be more useful in instances where a company applicant provides a business service as a corporate formation agent. In such cases, the company applicant's business is directly relevant because it is the reason why the individual is a company applicant. Collecting the business addresses of such company applicants may also allow law enforcement to identify patterns of entity creation or registration by linking the business addresses of company applicants for different entities.

Some commenters raised questions about whether the reported address must be in the United States, and about alternative types of addresses. Under the final rule, the address must be the individual's current street address, but the final rule does not require that it be an address in the United States. Accordingly, in cases in which a beneficial owner or company applicant does not have a street address in the United States, the reporting company may report a street address in a foreign jurisdiction. Alternatives such as post office boxes, private mailboxes, and addresses of business agents or corporate agents are not residential street addresses, and such alternatives do not provide an adequate substitute for the residential street address to establish the identity of a beneficial owner.

In general, FinCEN recognizes the sensitivity inherent in collecting any personal identifying information and takes seriously the need to maintain the highest standards for information security protections for information reported to FinCEN to prevent the loss of confidentiality, integrity, and availability of information that may have a severe or catastrophic adverse effect.[128] In addition, commenters noted circumstances in which reporting residential street addresses may present unique challenges. In particular, FinCEN recognizes the importance of address confidentiality programs in ensuring the safety of victims of domestic violence and other crimes and will consider appropriate guidance or

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

[128] 31 U.S.C. 5336(c)(8).

relief to address those situations. As more information may be required regarding the specifics of these programs and the technical specifications of FinCEN's BOSS, FinCEN will address these matters at a later date.[129] If other unique circumstances arise that present challenges in reporting residential street addresses, FinCEN will consider those circumstances on a case-by-case basis.

b. Unique Identifying Number and Image From Identification Document

Proposed Rule. Proposed 31 CFR 1010.380(b)(1)(ii) specified that, for each individual who is a beneficial owner or company applicant, a unique identifying number must be reported from one of four types of acceptable identification documents: a nonexpired U.S. passport; a nonexpired state, local, or Tribal identification document; a nonexpired State-issued driver's license; or, if an individual lacks one of those other documents, a nonexpired foreign passport.[130] Proposed 31 CFR 1010.380(b)(1)(ii) also required the reporting company to provide an image of the identification document from which the unique identifying number was obtained.

Comments Received. With respect to the types of acceptable identification documents, commenters pointed out a number of situations in which a beneficial owner or company applicant may not have an acceptable identification document. For example, commenters noted that a person may not possess one of the permissible types of identification documents because of the difficulty in appearing in person at a State department of motor vehicles when required to secure or renew an ID due to, *e.g.,* incapacitation or other medical conditions. The comments included suggestions for alternatives in cases where an acceptable identification document is unavailable, such as social security numbers, other images, or a check-box indicating that an identification document is unavailable. Other commenters indicated that the requirement to submit a foreign passport number may have the unintended consequence of harming foreign small business owners who do not need to acquire a foreign passport for international travel. With respect to foreign passports, commenters also suggested that FinCEN clarify that a foreign passport number be used only as a last resort, *i.e.,* where the other enumerated forms of identification documents are unavailable.

With respect to the collection of images, some commenters concurred with the proposal to collect images because, among other things, that information would be valuable for law enforcement, allow easier verification of submitted information, and represent a modest increase in burden for most reporting companies. By contrast, a number of commenters questioned whether the CTA authorizes FinCEN to collect images, expressed concerns regarding privacy considerations, and noted that it would be burdensome for reporting companies to collect and store images of these sensitive documents. Some commenters also viewed this requirement as duplicative and unnecessary because law enforcement already has the ability to retrieve a driver's license or other identifying document using the unique identification number. Other commenters suggested an iterative approach, arguing that the collection of images should be considered at a later time after FinCEN gains experience with the implementation of the beneficial ownership database.

Final Rule. The final rule adopts the proposed 31 CFR 1010.380(b)(1)(ii) regarding the types of ''acceptable identification document'' that reporting companies may submit with respect to beneficial owners and company applicants, with minor clarifying edits. Specifically, FinCEN has clarified that reporting companies must specify what jurisdiction issued the identification document from which a beneficial owner's unique identifying number came. This information is necessary to ensure that the identifying number can be identified as unique and valid, and to avoid situations where two different individuals may have the same identifying number in documents issued by different jurisdictions.[131]

FinCEN considered comments regarding the potential for alternatives where an acceptable identification document is unavailable. However, the CTA is clear in identifying the four specific types of identification documents that are ''acceptable.'' While FinCEN recognizes that circumstances may arise where obtaining such documents may present burdens, the CTA does not contemplate alternatives to the four common and reliable forms of identification documents that are expressly enumerated in 31 U.S.C. 5336(a)(1). In addition, the statute is clear that a foreign passport may be used only if the other enumerated forms of identification documents are not available, and FinCEN is not making any changes in response to comments on this issue.

After careful consideration, FinCEN continues to believe that collecting images from a reporting company in connection with a specific beneficial owner or company applicant will contribute significantly to maintaining a BOI database that is highly useful in facilitating national security, intelligence, and law enforcement activities as required by the CTA. FinCEN appreciates that the requirement to provide images of identifying documents may impose some additional burden, and it has included a qualitative discussion of such costs in the regulatory impact analysis. However, FinCEN views the benefits associated with this requirement as outweighing the burdens.

As an initial matter, requiring the submission of an image will help confirm the accuracy of the reported unique identification number. In addition, as some commenters noted, the submission of a falsified image would require much more effort than submitting an incorrect identification number. Thus, the requirement to submit an image of an identification document will also make it harder to provide false identification information.

In addition, images of identification documents will assist law enforcement in accurately identifying individuals in the course of an investigation because those scans will contain a picture of the person associated with the identifying number. While law enforcement may be able to secure copies of driver's licenses or passport pages through alternative means, such as subpoenas, summonses, or access agreements with state departments of motor vehicles or other entities, the need for such efforts can result in delays in the investigative process. This is particularly the case for foreign identification documents that would likely be difficult to obtain and could be subject to procedures under mutual legal assistance treaties that are limited to criminal matters. For similar reasons, FinCEN expects that the images will assist financial institutions subject to customer due diligence requirements under the 2016 CDD Rule in the performance of those requirements.

FinCEN also notes that disclosures of this type already occur regularly in a variety of circumstances. The federal and state agencies that issue identification documents of course

[129] FinCEN also intends to issue guidance or relief regarding address confidentiality programs in the context of a request by an individual for a FinCEN identifier.

[130] *See* 31 U.S.C. 5336(b)(2)(A)(iv)(I) (unique identifying number requirement); 31 U.S.C. 5336(a)(1) (definition of ''acceptable identification document'').

[131] *See* note 124, *supra.*

retain the information those documents contain. Moreover, companies routinely review (and many retain images of) identification information in the course of verifying eligibility for employment in the United States to complete U.S. Citizenship and Immigration Services form I–9. Financial institutions subject to CIP obligations frequently require individuals to present identification documents when opening new accounts, and they routinely retain copies of those documents. Perhaps most telling, legal entities opening accounts at covered financial institutions in the United States should also already be accustomed to providing identification information and images of identifying documents to those financial institutions, which need the information in order to comply with the beneficial ownership requirements of the 2016 CDD Rule.[132] And beneficial owners of such legal entities should already be accustomed to providing that information to the entities they own—often in the form of actual identification documents or images of the same—in order to make possible the disclosures that are necessary for CDD purposes. Given the frequency and variety of the circumstances in which this information, including images, is disclosed, FinCEN does not think that its disclosure in this context is unreasonable.

At the same time, FinCEN appreciates the privacy concerns associated with disclosure and retention of identity information. FinCEN takes seriously its responsibility to protect such information and will ensure—including through a future rulemaking governing access to BOI—that BOI will be used only for statutorily authorized purposes and will be subject to stringent use and security protocols. Indeed, there are significant statutory restrictions on the sharing of BOI, and FinCEN is required to promulgate appropriate protocols for protecting the security and confidentiality of that information.[133] Those protocols must, for example, require requesting agencies to establish and maintain secure systems for storing BOI, provide a report on the procedures that will be used to ensure the confidentiality of the information, impose limits on who may access the information and training requirements for those authorized people, maintain a permanent system of standardized records and an auditable trail of each request, conduct an annual audit, and follow other necessary or appropriate safeguards.[134] Unauthorized use or disclosure of BOI may be subject to criminal and civil penalties.[135] Access within the Department will also be subject to procedures and safeguards.[136] Protecting the security and confidentiality of this information is a critical priority for FinCEN.

FinCEN is not persuaded by comments suggesting an iterative approach to the collection of images that would evaluate the need for the collection of images after operationalizing the beneficial ownership database. It could be more expensive for reporting companies to conduct additional due diligence and collect scanned images for beneficial owners or company applicants at a later time after already investing up front to collect and submit such persons' identifying information as part of an initial report. Moreover, particularly given the benefits in deterring fraud and enabling verification, the collection of such information from the outset would help ensure that the BOI database is highly useful for law enforcement and national security agencies at its inception.

Finally, FinCEN disagrees with the commenters who questioned FinCEN's statutory authority to collect images of identification documents. Although images are not expressly specified as information required to be reported in 31 U.S.C. 5336(b)(2)(A), another provision of the statute, 31 U.S.C. 5336(h)(1)(A), makes it unlawful to provide ''false or fraudulent beneficial ownership information, *including a false or fraudulent identifying photograph or document,* to FinCEN in accordance with subsection (b)'' (emphasis added). This provision clearly contemplates that identifying photographs or documents are among the beneficial ownership information FinCEN may require under 31 U.S.C. 5336(b). If FinCEN lacked authority to collect images of identifying documents, the express reference to such documents in the penalty provision would be superfluous. Moreover, the CTA authorizes FinCEN to prescribe procedures and standards for the reports required under subsection (b), and it specifies that the reports include a unique identifying number from an acceptable identification document. In prescribing those procedures and standards, the CTA directs FinCEN to ensure the reported BOI is ''accurate, complete, and highly useful.'' [137] Images of identifying documents will further that objective. Accordingly, in prescribing how reporting companies are to identify individuals by a unique identifying number from an acceptable identification document, FinCEN may require that an image of the document be provided along with the number.

As discussed in detail in Section II.ii related to updated or corrected reports, reporting companies will need to provide updates to information reported under 31 CFR 1010.380(b)—including images of an identifying document—only where there is ''any change with respect to required information previously submitted to FinCEN concerning a reporting company or its beneficial owners.'' Changes in expiration dates or personally identifiable information other than the data specified in 31 CFR 1010.380(b)(1)(ii)(A–D) do not require the submission of an updated image.

c. Voluntary TIN

Proposed Rule. Proposed 31 CFR 1010.38(b)(2) permitted a reporting company to report the 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 would provide. FinCEN proposed this voluntary reporting option because such information, if reported, would help ensure that the BOI database is highly useful for authorized users, in furtherance of the CTA's purpose and mandate. For example, it was anticipated that having access to a TIN would allow authorized users such as law enforcement, the IRS, and financial institutions to cross-reference other databases and more easily verify the information of an individual. FinCEN proposed to require consent from individuals whose TINs are reported because TINs in most cases are an individual's social security number, and such numbers are subject to special protections under the Privacy Act.

Comments Received. Commenters both supported and opposed the submission of TINs on a voluntary basis. Those that supported the collection of TINs on a voluntary basis indicated it would provide useful information for authorized users of the BOI database—including law enforcement, investigators, and financial institutions—for accuracy-enhancing, identification, and verification purposes. Certain commenters stated that it was unnecessary to require a reporting company to obtain an individual's consent, while others said

[132] 31 CFR 1010.230(b)(2).

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

[134] *See* 31 U.S.C. 5336(c)(3)(A)–(K).

[135] *See* 31 U.S.C. 5336(h)(2).

[136] *See* 31 U.S.C. 5336(c)(5), (8).

[137] 31 U.S.C. 5336(b)(4)(B)(ii).

that consent should be based on an opt-out framework rather than having a prior-consent requirement. Some of these commenters also suggested that the collection of TINs be made mandatory.

Other commenters maintained that the CTA does not provide FinCEN with the authority to collect TINs, even on a voluntary basis. One commenter in particular argued that FinCEN may not collect such information on a voluntary basis absent a specific statutory authorization, and that, in any event, agencies collecting information provided on a voluntary basis need to satisfy other legal requirements, such as those imposed by the Privacy Act [138] and the Paperwork Reduction Act.[139] Other commenters stated that a voluntary reporting option would be ineffective because reporting companies would lack incentives to undertake the effort to collect TINs, obtain consent, and report the TINs to FinCEN, if there were no requirement to do so. In addition, commenters raised concerns about any collection of TINs given the risk of data leaks and data privacy considerations.

Final Rule. FinCEN has eliminated proposed 31 CFR 1010.38(b)(2) in the final rule. FinCEN assesses that the benefits to be gained from such voluntary collection (such as benefits to law enforcement, the IRS, and financial institutions) are likely to be limited given that the reporting is voluntary, and many reporting companies will likely decline to provide such information, particularly given the need to obtain affirmative consent from each individual prior to reporting their TIN. Moreover, FinCEN acknowledges the views of some commenters that TINs are subject to heightened privacy concerns because they are typically an individual's social security number, and that the collection of such information could entail greater cybersecurity and operational risks. Accordingly, FinCEN believes that at this time the benefits of implementing the voluntary reporting provision do not outweigh the additional burden, complication, and risks associated with the collection of TINs on a voluntary basis.

iv. Special Rules

Proposed 31 CFR 1010.380(b)(3) set forth special rules for the information required to be reported regarding ownership interests held by exempt entities, minor children, foreign pooled investment vehicles, and deceased company applicants. The following discusses these special rules, with the exception of the special rule applicable to minor children in 31 CFR 1010.380(b)(3)(ii), which is discussed in connection with the exceptions to the definition of beneficial owner.

a. Reporting Company Owned by Exempt Entity

Proposed Rule. Proposed 31 CFR 1010.380(b)(3)(i) set forth a special rule for reporting companies with ownership interests held by exempt entities. The proposed rule provided that 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 filed by the reporting company shall include the name of the exempt entity rather than the information required with respect to such beneficial owner. This proposed rule was intended to implement the special rule for exempt entities set forth at 31 U.S.C. 5336(b)(2)(B).

Comments Received. Commenters noted a number of considerations in the application of the special reporting rule for exempt entities. Some commenters observed that the proposed rule treated ownership through an exempt entity differently from substantial control exercised through an exempt entity. These commenters suggested that FinCEN should extend the special rule to permit a reporting company to report an exempt entity in situations in which the exempt entity is a beneficial owner by virtue of its ''substantial control'' over the reporting company. Other commenters suggested that individuals appointed by an exempt entity to manage a reporting company, *e.g.,* as a board member or a senior officer to guide or constrain the reporting company, should be considered an intermediary or agent of the reporting company rather than a beneficial owner of the reporting company. One commenter expressed concerns about the burdens that the special rule would impose on reporting companies to investigate and understand the ownership structure of upstream exempt entities in order to identify ultimate beneficial owners of the reporting company. To simplify reporting in such cases, the commenter suggested, among other things, a limiting principle to allow the reporting company to report an exempt entity nearest in the chain of ownership that itself owns 25% of the reporting company, regardless of individual ownership of that exempt entity.

Final Rule. The final rule clarifies proposed 31 CFR 1010.380(b)(3)(i) to address practical challenges identified in the operation of the proposed rule. First, the final rule clarifies that the special rule may apply where an individual holds ownership interests in a reporting company through ''one or more'' exempt entities. An individual may be a beneficial owner of a reporting company by indirectly holding 25 percent or more of the ownership interests of the reporting company through multiple exempt entities.

Second, the final rule clarifies that it applies only when an individual is a beneficial owner of a reporting company ''exclusively'' by virtue of the individual's ownership interest in exempt entities. Without this clarification, the proposed rule could have been read to enable beneficial owners who hold ownership interests through both exempt and non-exempt entities to obscure their standing as beneficial owners of a reporting company. For example, it would not have been necessary to report an individual who holds a 24 percent interest in a reporting company through a non-exempt entity and a one percent interest in the same reporting company through an exempt entity (for a total, otherwise reportable, ownership interest of 25 percent) as a beneficial owner under the proposed rule. The proposed special rule therefore could have provided a means through which beneficial owners of a reporting company could have avoided being reported by electing to hold even a small portion of their ownership interests through an exempt entity and keeping their ownership interests through non-exempt entities under 25 percent. The final rule language precludes this outcome. FinCEN believes that this special rule will contribute to maintaining an accurate database and minimize inaccuracies and confusion.

FinCEN has considered the comments requesting expansion of the special rule to include beneficial owners who exercise substantial control through an exempt entity. However, FinCEN does not believe such an expansion is warranted. The statutory provision that this special rule implements is focused on an exempt entity ''hav[ing] a direct or indirect ownership interest in a reporting company.'' [140] This focus reflects an effort to relieve reporting burdens associated with ownership of exempt entities. But substantial control raises different concerns in light of the variety of ways in which such control

[138] 5 U.S.C. 552a.

[139] 44 U.S.C. 3501 *et seq.*

[140] 31 U.S.C. 5336(b)(2)(B).

may be exercised over a reporting company. FinCEN believes that it would limit the usefulness of the database and create opportunities for evasion if beneficial owners who have substantial control over reporting companies through exempt entities do not need to be reported.

Third, the final rule makes the use of this special rule optional, rather than mandatory, using ''may'' instead of ''shall.'' A reporting company would therefore have the option to provide information about individuals who are beneficial owners of the reporting company by virtue of their interests in the exempt entity, rather than providing information about the exempt entity itself. This enables an exempt entity to avoid being identified, a concern expressed by a commenter, and instead provide information about a beneficial owner directly if the reporting company wishes to do so. Although the CTA specifies that the reporting company ''shall . . . only'' list the name of the exempt entity, that language is reasonably read to mean that the reporting company shall only be required to do so—*i.e.,* that the requirement is optional.[141] This interpretation harmonizes that language with other language providing that the reporting company ''shall not be required'' to report information about beneficial owners.

b. Company Applicant for Existing Companies

Proposed Rule. Proposed 31 CFR 1010.380(b)(3)(iv) contained a special rule for situations where a reporting company is created before the effective date of the regulations and the company applicant died before the reporting obligation became effective. The NPRM explained that the requirement to report identifying information about company applicants may present challenges for a longstanding company (*e.g.,* one that was formed decades ago). To minimize burdens when the applicant has died and information about the applicant may not be readily available, the NPRM therefore proposed to allow a reporting company 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.

The NPRM sought comment on whether there are any significant alternatives to the proposed rules that would minimize their impact on small entities while accomplishing the objectives of the CTA. The NPRM also sought comment on whether the one-year timeline for a preexisting reporting company to file its initial report imposes undue burdens on reporting companies, in light of the need to conduct due diligence to determine beneficial owners and company applicants and collect relevant information.

Comments Received. Numerous comments highlighted the difficulties in obtaining company applicant information for reporting companies formed before the effective date of the regulations, even if the company applicant is not known to be deceased. Commenters explained that the rationale for relieving companies of the burden to report information about deceased applicants extended to all company applicants of reporting companies formed or registered before the effective date. Commenters from the small business community characterized the challenges of undertaking a lookback to ascertain company applicant information for preexisting companies as a ''nightmare'' and a ''wild goose chase.'' Even if a preexisting reporting company were able to identify the particular individuals who previously formed or registered the company, these commenters noted that there would be significant challenges in tracking down those individuals and obtaining the reportable information from them. Commenters stated that collecting such information for existing entities would be burdensome if not impossible in many cases, because the reporting company may have no contact information for the company applicant and the company applicant may be incapacitated or impossible to contact for other reasons.

Some commenters suggested that FinCEN should create differentiated rules for the reporting of company applicant information for entities existing prior to the effective date of these regulations and for company applicant information for reporting companies created after the effective date. Commenters most frequently suggested that the deceased company applicant special rule be expanded to apply to any reporting company created more than a specific time period before the effective date of the regulation, *e.g.,* before January 1, 2000, or ten years before the effective date of this regulation. For example, one commenter suggested that if a reporting company was created or registered before the effective date of the final rule, the company applicant reporting requirement should be limited to information about the company applicant of which the reporting company has actual knowledge. Other commenters recommended expanding the special rule for deceased company applicants to other situations, such as where the company applicant's location and information is unknown or the company applicant is disabled, incapacitated, or otherwise unable to provide the required identification information.

Final Rule. The final rule addresses these concerns by expanding the proposed 31 CFR 1010.380(b)(3)(iv) (renumbered in the final rule as 31 CFR 1010.380(b)(2)(iv)) into a more general rule that reporting companies created or registered before the effective date of the regulation do not need to report information about their company applicants. FinCEN has considered the numerous comments that identified practical challenges in identifying company applicants and company applicant information for reporting companies that were in existence prior to the effective date of the regulation. In large part, these practical challenges are likely to arise because the reporting company often does not have a direct or ongoing relationship with a company applicant, particularly if that company applicant is associated with a corporate formation service provider. FinCEN agrees with commenters that there are substantial and unique burdens associated with identifying company applicants and obtaining company applicant information for companies that have been in existence for some time.

At the same time, FinCEN has considered the law enforcement value of company applicant information for entities existing prior to the effective date of the regulation, and FinCEN believes such value is limited. The value of such information becomes increasingly attenuated over time, given that an individual company applicant may have limited recollection of the facts and circumstances that gave rise to the creation or formation of an existing reporting company, and no ongoing relationship with the company.

FinCEN considered various alternatives, including a specific time period (*e.g.,* ten years) for reporting past company applicants or an ''actual knowledge'' standard. However, a specific time period would impose greater burdens on reporting companies by requiring them to obtain information about company applicants used in the past, and an ''actual knowledge'' standard would be more complicated to administer and enforce. Moreover,

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

neither alternative would entail significantly greater benefits for law enforcement. Ultimately, FinCEN believes the effective date of the regulation provides an appropriate balance to ensure the availability of useful information to law enforcement for new or ongoing investigations while also providing a reasonable date for which reporting companies can reasonably identify company applicants and company applicant information, particularly because company applicants and reporting companies will be on notice of the requirements of the final rule by the effective date and will file their reports shortly after new companies are formed or registered.

This approach is also consistent with the plain language of the CTA. Although the CTA requires reporting companies to ''identify each beneficial owner of the applicable reporting company and each applicant with respect to that reporting company,'' the statute defines ''applicant'' in the present tense as any individual who ''files'' or ''registers'' an application to form or register an entity.[142] At the time of the effective date of the final rule, when this obligation is imposed, entities that were formed or registered prior to the effective date will have no individual who *files* or *registers* the application because such filing or registration will have occurred in the past.[143] Such entities will thus have no company applicant to report.

In light of all these considerations, the final rule specifies that existing entities formed or registered before the effective date of the final rule are not required to report company applicant information.

c. Foreign Pooled Investment Vehicles

Proposed Rule. Proposed 31 CFR 1010.380(b)(3)(iii) contained a special rule for foreign pooled investment vehicles, which implements 31 U.S.C. 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.

Comments Received. A few commenters representing industry groups who sought clarity on this issue during the ANPRM comment process expressed the view that the revised text presented in the NPRM addressed their concerns about the scope of this special rule, and urged its adoption as proposed. One commenter found the proposed rule to be unclear and requested additional language stating that a foreign pooled investment vehicle registered to do business in a state or Tribal jurisdiction could be required to submit BOI to FinCEN. Another commenter suggested that because foreign pooled investment vehicles are designed to aggregate funds from investors, addressing the risks of such entities requires collecting information on the individuals who control the funding of the vehicle. The commenter proposed language mandating disclosure of ''the individual who has the greatest authority to collect, invest, distribute, return, and otherwise direct the funds of the [foreign pooled investment vehicle].''

Final Rule. FinCEN is adopting 31 CFR 1010.380(b)(3)(iii) as proposed (renumbered as 31 CFR 1010.380(b)(2)(iii)) and believes that the commenters' suggested changes are unnecessary. With regard to clarifying that only foreign pooled investment vehicles that are registered with states or Tribal jurisdictions may be required to report BOI, FinCEN believes that this point is inherent in the definition of reporting company. An entity formed under the law of a foreign country is only a reporting company and required to report BOI if it is registered to do business in a state or Tribal jurisdiction.

Similarly, FinCEN believes that the suggested change regarding reporting of individuals who control the funding of foreign pooled investment vehicles is already contained in the substantial control definition. Substantial control may consist of directing, determining, or having substantial influence over important decisions made by the reporting company. These include, for example, ''major expenditures or investments'' and ''the selection or termination of business lines or ventures'' of the reporting company, among other things. Any person that can exercise control over the funding of foreign pooled investment vehicles would fall within the definition of substantial control, and therefore, FinCEN believes that further clarification is unnecessary.

v. Contents of Updated or Corrected Reports

Proposed Rule. Proposed 31 CFR 1010.380(b)(4) specified the content of updated and corrected reports, providing that if any required information in an initial report is inaccurate or there is a change with respect to 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. Proposed 31 CFR 1010.380(b)(4) also provided that if a reporting company meets the criteria for any exemption from the definition of reporting company subsequent to the filing of an initial report, its updated report shall include a notification that the entity is no longer a reporting company.

The NPRM sought comment on whether there are any significant alternatives to the proposed rules that would minimize their impact on small entities while accomplishing the objectives of the CTA, and also on whether the burden of the 30-day update requirement is justified.

Comments Received. A number of commenters emphasized the burden associated with having to update the information they report about company applicants whenever it changes, in light of the fact that a reporting company often has no ongoing relationship with such individuals. Commenters noted that in such instances, a reporting company would not have visibility into changes to company applicant information, and a company applicant would have no obligation to provide updated information to the reporting company. Given these practical challenges, some commenters suggested that the requirement for updated reports be limited to beneficial owners and reporting companies, and exclude company applicants. Other commenters suggested that the responsibility for reporting changes to company applicant information should rest with the company applicant, not the reporting company. In other words, FinCEN should require company applicants to either (1) provide updated information to the reporting company, or (2) obtain a FinCEN identifier and provide this to the reporting company, so that that there is no need for a reporting company to report updated information regarding company applicants.[144] A couple of

[142] *See* 31 U.S.C. 5336(b)(2)(A), (a)(2).

[143] Such present-tense language in a statute generally does not include the past. *See Carr* v. *United States,* 130 S. Ct. 2229, 2236 (2010); 1 U.S.C. 1 (''[U]nless the context indicates otherwise . . . words used in the present tense include the future as well as the present.''). In any event, FinCEN also has authority under 31 U.S.C. 5318(a)(7) to ''prescribe an appropriate exemption from a requirement under this subchapter,'' which includes the CTA in section 5336. To the extent the CTA can be read to require existing companies to report company applicants, FinCEN has determined that an exemption from such requirement is appropriate.

[144] At least one commenter made a similar point with respect to updated or corrected reports related to beneficial owners, suggesting that where a reporting company has disclosed a beneficial owner's FinCEN identifier, liability associated with

Continued

commenters also suggested that if a reporting company makes a reasonable and good faith effort to obtain company applicant information for updated reports and provides proof of such efforts, the reporting company should be deemed to have satisfied the requirements and not be subject to penalties if that information is later determined to be inaccurate or incomplete. Finally, at least one commenter suggested that, in general, a reporting company should only have to report updates or corrections to material information.

Final Rule. FinCEN is adopting 31 CFR 1010.380(b)(4), renumbered as 31 CFR 1010.380(b)(3), with certain modifications. First, the final rule clarifies the reporting requirements by separating 31 CFR 1010.380(b)(3) into three paragraphs; adding cross-references to 31 CFR 1010.380(a), which contains the timing requirements for updated and corrected reports; and adding certain other clarifying language. Second, as an additional measure to minimize the impact of the final rule on small businesses, the final rule specifies that reporting companies need only update information concerning the reporting company or its beneficial owners. Reporting companies therefore will not be required to update previously reported information about their company applicants. This change in reporting requirements only applies to updated reports; reporting companies will still be required to correct any inaccurate information previously reported about their company applicants.

As explained in Section III.B.iv.b. above, the final rule eliminates the company applicant reporting requirement for existing reporting companies, but not for companies created or registered after the effective date of the final rule. Those companies must report company applicant information, and the CTA requires this information to be updated when it changes.[145] However, FinCEN has authority to prescribe an appropriate exemption from the statutory updating requirement, and FinCEN has determined that it is appropriate to do so.[146] FinCEN is persuaded by comments that reporting companies would face significant challenges in updating previously reported information about their company applicants. FinCEN agrees that because a reporting company and its company applicant may not have an ongoing relationship, it would often be difficult for a reporting company to ascertain when there has been a change to company applicant information and to require such company applicant to provide updated information for reporting. Further, FinCEN believes that updated information about a company applicant would be of limited value for law enforcement over time for the same reasons that initial reports of company applicant information by pre-existing reporting companies would be of limited value to law enforcement. Therefore, the benefits of this information would not outweigh the burdens that the requirement would impose on small businesses.

FinCEN also considered comments that highlighted the utility of the FinCEN identifier with respect to updating previously reported information, and that suggested the requirement for updated and corrected reports be limited to material information only. With respect to the former, FinCEN notes that the statute does not authorize FinCEN to require that individuals obtain and report their FinCEN identifier. The statute is also clear that reporting companies are to report changes with respect to *any* required information, not just material changes.[147]

vi. FinCEN Identifier

The CTA requires that FinCEN provide a unique identifier (FinCEN ID) upon request to: (1) an individual who provides FinCEN with the same information as is required from a beneficial owner or company applicant, and (2) any reporting company that has provided its BOI to FinCEN. In certain instances, beneficial owners, company applicants, and reporting companies may provide a FinCEN ID to a reporting company in lieu of providing required BOI.

Proposed Rule. Proposed 31 CFR 1010.380(b)(5) set forth rules regarding obtaining and using a FinCEN ID. Consistent with the CTA, proposed 31 CFR 1010.380(b)(5)(i) provided that an individual may obtain a FinCEN ID by submitting to FinCEN an application containing the information that the individual would otherwise have to provide to a reporting company if the individual were a beneficial owner or company applicant of the reporting company. It also provided that a reporting company can obtain a FinCEN ID from FinCEN when it submits a filing as a reporting company or any time thereafter, and it specified that each FinCEN ID shall be specific to each individual or company.

Proposed 31 CFR 1010.380(b)(5)(ii) outlined the permissible uses of the FinCEN ID. Specifically, after an individual has provided information to FinCEN to obtain a FinCEN ID, the individual may provide the FinCEN ID to a reporting company and the reporting company may report the FinCEN ID in lieu of the identifying information required to be reported about that individual. For instance, a beneficial owner can provide his or her FinCEN ID to the reporting company, and the reporting company can report the FinCEN ID to FinCEN in lieu of reporting that individual's name, date of birth, address, unique identifying number, and image of the identification document. As noted in the proposed rule, the underlying information associated with a FinCEN ID would still be available to FinCEN. Proposed 31 CFR 1010.380(b)(5)(ii) also provided that those who obtain a FinCEN ID are required to update or correct the information they submit in their application, and proposed 31 CFR 1010.380(f)(2) retained the statutory definition and defined ''FinCEN identifier'' as the unique identifying number assigned by FinCEN to an individual or legal entity under this section.

In addition, proposed 31 CFR 1010.380(b)(5)(ii)(C) incorporated the language of 31 U.S.C. 5336(b)(3)(C), which specifies how a reporting company's FinCEN ID is to be used. The proposed rule provided that 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 holds an interest in the reporting company, then the reporting company can report the FinCEN ID of that intermediary entity in lieu of reporting the company's beneficial owner.

Comments Received. Commenters requested clarity regarding various aspects of the FinCEN ID, including the application process, responsibility for updates, and whether reporting the FinCEN ID would be mandatory. Some commenters expressed concerns about misuse of the FinCEN ID, including whether a reporting company might use FinCEN IDs for intermediary companies in a manner that might result in greater secrecy, or incomplete or misleading disclosures. Various commenters requested examples to illustrate how the FinCEN ID would be used. Others asked

updating information linked to that FinCEN identifier should rest solely with the individual to whom the FinCEN identifier relates, not with the reporting company.

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

[146] Under 31 U.S.C. 5318(a)(7), FinCEN may ''prescribe an appropriate exemption from a requirement under this subchapter,'' which includes the CTA in section 5336.

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

what the purpose of the FinCEN ID was, and whether it was needed given the security of the information in the database. Some commenters asked about the applicability of the FinCEN ID to company applicants and entities such as law firms and corporate service providers. Some commenters encouraged FinCEN to provide requested FinCEN IDs in a prompt manner and to also provide a draft application for public comment and training. Multiple commenters emphasized that the underlying information behind the FinCEN ID should be available to all authorized users, including financial institutions.

Final Rule. The final rule adopts proposed 1010.380(b)(5)(i) (renumbered as 1010.380(b)(4)(i)) with minor clarifying edits, and proposed 1010.380(b)(5)(ii)(A)–(C) (renumbered as 1010.380(b)(4)(ii)(A)–(C)) and 1010.380(f)(2) as proposed. The final rule adopts proposed 1010.380(b)(5)(ii)(D) with additional clarifying edits regarding the requirements to update and correct FinCEN ID information, set forth as a separate paragraph at final 1010.380(b)(4)(iii).

FinCEN intends to provide individuals and reporting companies that choose to request a FinCEN ID with information about the application process, the processing time, the procedure for updating a FinCEN ID, and other procedural questions. FinCEN will also consider the request to provide examples of how individuals and reporting companies may use the FinCEN ID as it considers future guidance and FAQs. With respect to company applicants, FinCEN believes the statutory text and final rule are clear that the definition of company applicant is an individual, which further supports the goal of the CTA to populate the database with highly useful information that assists law enforcement and others in identifying those individuals associated with reporting company formation or registration. FinCEN also believes the statutory text is clear that the underlying BOI is available to authorized users, and the FinCEN ID is available to those who request it for the purposes identified in the statute and final rule.

With respect to the additional clarifying edits to proposed 1010.380(b)(5)(ii)(D) (now set forth as a separate paragraph at final 1010.380(b)(4)(iii)), FinCEN has clarified that individuals with a FinCEN ID shall make updates or corrections to their information by submitting an updated application for a FinCEN ID to FinCEN, subject to the same timelines and terms as updates or corrections to a BOI report by a reporting company.

The final rule does not adopt proposed 31 CFR 1010.380(b)(5)(ii)(B) and (C) regarding use of FinCEN IDs for entities. Commenters have identified concerns about how these parts of the proposed rule could be applied in ways that result in incomplete or misleading disclosures. Several commenters noted that the proposed language may be confusing and may pose problems when a reporting company's ownership structure involves multiple beneficial owners and/or intermediate entities. FinCEN is continuing to consider these issues and intends to address them before the effective date. Accordingly, FinCEN has reserved 31 CFR 1010.380(b)(5)(ii)(B) in this final rule.

C. Beneficial Owners

Consistent with the CTA, the final rule defines a ''beneficial owner,'' with respect to a reporting company, as ''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.'' [148] Each reporting company will be required to identify as a beneficial owner any individual who satisfies either of these two components of the definition, unless the individual is subject to an exclusion from the definition of ''beneficial owner.'' FinCEN expects that a reporting company will always identify at least one beneficial owner under the ''substantial control'' component, even if all other individuals are subject to an exclusion or fail to satisfy the ''ownership interests'' component.

i. Substantial Control

Proposed Rule. Proposed 31 CFR 1010.380(d)(1) set forth three specific indicators of ''substantial control'': service as a senior officer of a reporting company; authority over the appointment or removal of any senior officer or a majority or dominant minority of the board of directors (or similar body) of a reporting company; and direction, determination, or decision of, or substantial influence over, important matters affecting a reporting company. The proposed rule also included a catch-all provision to ensure consideration of any other forms that substantial control might take beyond the criteria specifically listed. Consistent with the CTA, proposed 31 CFR 1010.380(d)(2) also made clear that an individual can exercise substantial control directly or indirectly through a variety of means. It included an illustrative, non-exhaustive list of examples of how substantial control could be exercised.

Comments Received. A number of commenters supported the proposed rule's definition of ''substantial control.'' In particular, they noted that the broad and flexible definition appropriately accounts for the fact that substantial control might take many forms, including forms that are not specifically listed, and they supported a definition that does not arbitrarily limit the number of individuals who may be reported as having substantial control, which would help prevent bad actors from evading identification.

Other commenters raised concerns about the practicality of implementing this definition. They maintained that this definition of the term ''substantial control'' would be inconsistent with other federal statutory and regulatory definitions, potentially confusing, or overly broad. These commenters reiterated concerns about burdens in applying the definition of ''substantial control'' and expressed the view that the definition was not rooted in state corporate-formation law or other federal statutes and regulations that use ''control'' concepts. Some commenters stated that the indicators of substantial control in the proposed definition focused on the potential to exercise substantial control rather than on the actual exercise of it. A few commenters suggested adding an express indicator regarding control over funds or assets of a company. Multiple commenters requested clarification on applying the definition to specific circumstances, including indirect control, agency relationships, and substantial control through trust arrangements.

Commenters suggested alternative approaches. One commenter suggested that FinCEN leave the term ''substantial control'' undefined. Other commenters urged FinCEN to adopt the approach reflected in the ''control'' prong of the 2016 CDD Rule, which required that new legal entity customers of a financial institution provide beneficial ownership information for any one individual ''with significant responsibility to control'' the entity. These commenters argued that such an approach would be more efficient and simplify compliance. Commenters also suggested that FinCEN take an iterative approach, starting with the approach reflected in the 2016 CDD Rule and then expanding the types of persons that may have substantial control over a reporting company if strong evidence emerged that supported such expansion.

[148] *See* 31 U.S.C. 5336(a)(3)(A).

More general concerns were raised as well. Some commenters argued that the CTA limits FinCEN to collecting beneficial ownership information on a single person because 31 U.S.C. 5336(a)(3)(A) defines ''beneficial owner'' as, ''with respect to an entity, *an* individual who . . . exercises substantial control or owns or controls not less than 25 percent of the ownership interests of the entity'' (emphasis added). Commenters also contended that FinCEN's proposed definition would impose significant burdens on financial institutions that spent years updating systems, procedures, and controls to implement the 2016 CDD Rule.

Multiple commenters raised concerns with the first indicator—service as a senior officer of a reporting company. In particular, commenters expressed the view that the definition of ''senior officer'' in proposed 31 CFR 1010.380(f)(8) may be overinclusive, particularly in the context of small corporations and LLCs. These commenters recommended either deleting the indicator or limiting the definition of ''senior officer'' to the chief executive officer, chief operating officer, or chief financial officer of a reporting company (or persons exercising similar functions). Some commenters asserted that secretaries and general counsels often have ministerial or advisory functions with very little control of the company. Other commenters stated that it was difficult to reconcile the inclusion of senior officers as an indicator in light of the employee exception to the definition of ''beneficial owner'' at proposed 31 CFR 1010.380(d)(4)(iii). Those commenters asserted that a senior officer is normally an employee and would fall within the scope of the exception. One commenter noted that the proposed rule defined ''employee'' using federal tax rules, which specifically provide that that term includes officers.

Multiple commenters requested that the second indicator be clarified. As proposed, the second indicator provided that an individual exercises substantial control if the individual has authority over the appointment or removal of any senior officer or a majority or dominant minority of the board of directors (or similar body) of a reporting company. Some commenters expressed confusion about the meaning of ''dominant minority,'' and questioned why the authority to appoint a dominant minority of the board of directors would constitute substantial control.

Some commenters supported the third indicator, which would treat as a beneficial owner an individual who can direct, determine, decide, or have substantial influence over important matters affecting a reporting company. These commenters supported the third indicator because it represents a comprehensive and flexible approach that applies to a broad range of circumstances. Other commenters either requested clarity or opposed the use of this indicator, because they believed it could significantly widen the definition of substantial control, encompass day-to-day business decisions that do not meet an adequate threshold of substantial control, and sweep in silent investors, employees, or contractual counterparties. Commenters noted concerns about the inclusion of ''substantial influence'' as a factor and the implications for minority shareholder protections that are defined rights intended to protect minority investors.

As to the catch-all provision, some commenters supported it as essential to enable consideration, and require reporting, of improper means of control, which might include economic pressure on company shareholders or employees, coercion, bribery, or threats of bodily harm. Others argued that the catch-all provision is too vague, renders the overall definition circular, or introduces greater compliance uncertainty, and accordingly that it should be removed.

With respect to proposed 31 CFR 1010.380(d)(2), one commenter indicated that this paragraph could lead to confusion because the principle of indirect control is already found in proposed paragraph (d)(1). This commenter suggested that paragraphs (d)(1) and (d)(2) be consolidated and simplified to remove the reference to ''direct or indirect'' control. Another commenter suggested that FinCEN provide guidance or examples to explain further the concept of indirect substantial control. Yet another commenter urged FinCEN not to extend that concept to the particular circumstance of control through a trust arrangement, at least not until the review process set forth in AML Act section 6502(d) has a chance to reach conclusions about the advisability of reporting requirements in connection with trusts.

Final Rule. The final 31 CFR 1010.380(d)(1) adopts the proposed rule largely as proposed, but with modifications to clarify and streamline application of the rule in general, to focus the applicability of the senior officer element of the definition of ''substantial control,'' and to clarify the issue of substantial control through trust arrangements. FinCEN believes that the definition of substantial control in the final rule strikes the appropriate overall balance: it is based on established legal principles and usages of this term in a range of contexts (as explained in the NPRM) and provides specificity that should assist with compliance, while at the same time being flexible enough to account for the wide variety of ways that individuals can exercise substantial control over an entity.

The final rule makes organizational changes to 31 CFR 1010.380(d)(1) and (d)(2) and creates a new paragraph (d)(1)(i), entitled ''Definition of Substantial Control,'' which lists the indicators previously located in paragraph (d)(1). Each of these indicators supports the basic goal of requiring a reporting company to identify the key individuals who stand behind the reporting company and direct its actions. The first indicator identifies the individuals with nominal or *de jure* authority, and the second and third indicators identify the individuals with functional or *de facto* authority.

As to the first indicator (*i.e.,* service as a senior officer of a reporting company), the final rule adopts the proposed language.[149] This indicator provides clear, bright-line guidance on one category of persons who exercise a significant degree of control over the operations of a reporting company through executive functions. This approach is intended to streamline the determination of persons who might also exercise substantial control through the other indicators in the definition, and thereby reduce burden for reporting companies.

In addition, FinCEN has evaluated concerns raised about the scope of the definition of ''senior officer'' in proposed 31 CFR 1010.380(f)(8) and agrees with commenters that the roles of corporate secretary and treasurer tend to entail ministerial functions with little control of the company. FinCEN has therefore omitted those roles from the definition of ''senior officer.'' FinCEN considers the role of general counsel to be ordinarily more substantial, and has therefore retained this role as part of the definition of ''senior officer.'' FinCEN notes that the title of the officer ultimately is not dispositive, as the definition of ''senior officer'' and other indicators of substantial control make clear. Rather, the underlying question is whether the individual is exercising the authority or performing the functions of a senior officer, or otherwise has authority indicative of substantial

[149] Proposed 31 CFR 1010.380(d)(1) was also revised to enhance clarity by rephrasing the introduction (''An individual exercises substantial control . . . if . . .'') and making conforming changes to each indicator.

control. The final rule also incorporates changes to the ''employee'' exception to the definition of ''beneficial owner'' at proposed 31 CFR 1010.380(d)(4)(iii) to make more clear that persons who are senior officers are not subject to this exception, as discussed in Section III.C.iii.c. below.

As to the second indicator (*i.e.,* authority to appoint or remove certain individuals), the final rule adopts the proposed language with the deletion of the reference to authority to appoint or remove a ''dominant minority'' of the board of directors. A number of commenters raised questions about what constitutes a ''dominant minority,'' including whether such a dominant minority has the ability to exercise substantial control over a reporting company. FinCEN agrees with the concerns about ambiguities in the term ''dominant minority.'' Commenters also asked about the role of minority shareholder protections. In view of these comments, and with the objective of ensuring clarity and simplicity to the extent possible, FinCEN is deleting the reference to authority over a dominant minority from the final rule.

As to the third indicator (*i.e.,* directing, determining, or having substantial influence over decisions), the final rule adopts the proposed rule with amendments to enhance clarity. FinCEN considered a range of comments that requested changes to further define certain terms or to limit the scope of the indicator overall, as well as those that noted concerns about the meaning of terms such as ''substantial influence'' and ''important matters affecting'' the reporting company.

The final rule incorporates changes to the third indicator to clarify that it applies to individuals who ''direct, determine, or have substantial influence over important decisions made by the reporting company.'' FinCEN replaced the phrase ''important matters affecting'' the reporting company (which had been drawn from regulations implementing laws governing the Committee on Foreign Investment in the United States [150]) with ''important decisions made by'' the reporting company in order to address uncertainty identified by commenters that external events, actions of customers or suppliers, or other actions beyond a reporting company's control could ''affect'' a reporting company. FinCEN does not believe these types of external actions are a form of substantial control for which reporting is warranted. Instead, the final rule focuses on important internal decisions made by the reporting company, which is consistent with the illustrative list of examples of types of important decisions in 31 CFR 1010.380(d)(1)(i)(C)(*1*)–(*7*).

The final rule also retains the ''substantial influence'' language in the third indicator, because FinCEN envisions situations in which individuals may not have the power to direct or determine important decisions made by the reporting company, but may play a significant role in the decision-making process and outcomes with respect to those important decisions. For example, a sanctioned individual may direct an advisor to form a company to engage in business activities, with instructions to omit the sanctioned individual from any corporate-formation documents. The sanctioned individual, through the adviser, may continue to have substantial influence over important decisions of the reporting company, even if the individual does not direct or determine those decisions. A reporting company may also be structured such that multiple individuals exercise essentially equal authority over the entity's decisions—in which case each individual would likely be considered to have substantial influence over the decisions even though no single individual directs or determines them. This approach is consistent with the other prong of the CTA's ''beneficial owner'' definition (*i.e.,* ownership or control of at least 25 percent of the entity's ownership interests), which recognizes that something short of majority ownership can still be indicative of beneficial ownership of a reporting company.

Some commenters inquired about the treatment of tax professionals and other similarly situated professionals with an agency relationship to a reporting company who may exercise substantial influence in practical terms when they perform services within the scope of their duties. In particular, some tax and legal professionals may be formally designated as agents under IRS Form 2848 (Power of Attorney and Declaration of Representative). FinCEN does not envision that the performance of ordinary, arms-length advisory or other third-party professional services to a reporting company would provide an individual with the power to direct or determine, or have substantial influence over, important decisions of a reporting company. In such a case, the senior officers or board members of a reporting company would remain primarily responsible for making the decisions based on the external input provided by such third-party service providers. Moreover, if a tax or legal professional is designated as an agent of the reporting company, the exception to the ''beneficial owner'' definition provided in 31 CFR 1010.380(d)(3)(ii) with respect to nominees, intermediaries, custodians, and agents would apply.

In addition, the final rule does not modify the substance of proposed 31 CFR 1010.380(d)(1)(iii)(A)–(F), which provided specific examples of indicators that relate broadly to substantial control over important financial, structural, or organizational matters of the reporting company. This non-exhaustive list of examples is intended to clarify the types of company decisions FinCEN considers important, and thus relevant to an analysis of whether an individual has substantial control over a reporting company under the third indicator. Reporting companies should be guided by these specific examples, but they should also consider how individuals could exercise substantial control in other ways as well.

Fourth, the final rule also retains the catch-all provision of the ''substantial control'' definition in proposed 31 CFR 1010.380(d)(1)(iv). This provision recognizes that control exercised in novel and less conventional ways can still be substantial. It also could apply to the existence or emergence of varying and flexible governance structures, such as series limited liability companies and decentralized autonomous organizations, for which different indicators of control may be more relevant. As noted by commenters, paragraph (iv) also operates to address any efforts to evade or circumvent FinCEN's requirements and is intended to prevent sophisticated bad actors from structuring their relationships to exercise substantial control of reporting companies without the formalities typically associated with such control in ordinary companies. Such anti-evasion and anti-circumvention provisions are common in other regulatory frameworks that have proven administrable over time,[151] and, viewed in such a context, paragraph (iv) serves an important purpose to disincentivize unusual structures that may only serve to

[150] *See* 31 CFR 800.208.

[151] *Cf., e.g.,* 31 CFR 800.208(a) (Committee on Foreign Investment in the United States) (defining ''control'' to include, *inter alia,* ''formal or informal arrangements to act in concert, *or other means,* to determine, direct, or decide important matters affecting an entity; in particular, but without limitation, to determine, direct, take, reach, or cause decisions regarding the following [listed] matters, *or any other similarly important matters* affecting an entity'' (emphases added)); 17 CFR 230.405 (Securities and Exchange Commission) (defining ''control'' to include ''the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract, *or otherwise*'' (emphasis added)).

facilitate illegal activities. FinCEN recognizes that, as one commenter noted, additional guidance or FAQs may help to provide additional clarity to reporting companies in specific circumstances. As it implements and ensures compliance with the final rule, FinCEN expects to gain greater experience with the spectrum of arrangements or relationships that bad actors may establish to circumvent reporting requirements and engage in illegal activity. FinCEN will assess the need for additional guidance, notices, or FAQs accordingly.

Lastly, FinCEN considered the comments that stated a preference for a definition of substantial control comparable to the approach laid out in the 2016 CDD Rule. Under the ''control'' prong of the 2016 CDD Rule, new legal entity customers of a financial institution must provide BOI for ''[a] single individual with significant responsibility to control, manage, or direct a legal entity customer.'' [152] Several comments noted that the approach described in the 2016 CDD Rule could simplify compliance for reporting companies.

FinCEN has concluded that incorporating the 2016 CDD Rule's numerical limitation for identifying beneficial owners via substantial control is inconsistent with the CTA's objective of establishing a comprehensive BOI database for all beneficial owners of reporting companies.[153] FinCEN believes that limiting reporting of individuals in substantial control to one person, as in the 2016 CDD Rule—or indeed imposing any other numerical limit—would artificially restrict the reporting of beneficial owners who may exercise substantial control over an entity, and any such artificial ceiling could become a means of evasion or circumvention. Requiring reporting companies to identify all individuals who exercise substantial control would—as the CTA envisions—provide law enforcement and others a much more complete picture of who makes important decisions at a reporting company.[154]

Some comments maintained that the CTA prohibits FinCEN from requiring the identification of more than a single person as a beneficial owner by virtue of being in substantial control of the reporting company because the statute defines ''beneficial owner'' as ''*an* individual'' who exercises substantial control or owns or controls at least 25% of a reporting company's ownership interests.[155] But the CTA does not mandate a single-individual reporting approach with respect to substantial control. The statute's reporting requirement specifically calls for the identification of ''*each* beneficial owner of the applicable reporting company,'' not just one.[156] Many definitional provisions in the U.S. Code use formulations comparable to the CTA's reference to ''an individual'' in contexts where the plural is clearly indicated by the overall structure of the statute.[157]

Moreover, the phrase ''an individual'' precedes *both* the ''substantial control'' prong of the definition *and* the 25 percent ownership prong. If the phrase limited the reporting requirement to a single individual, that would mean either that a reporting company would only be required to report a single 25 percent owner as well as a single person in substantial control of the reporting company, or would only be required to report a single beneficial owner—either one person in substantial control or one person that is a 25 percent owner. This would not serve the CTA's fundamental objective of identifying each beneficial owner of a reporting company.[158] FinCEN therefore believes that requiring the identification of all individuals in substantial control of a reporting company is both permitted by the CTA and consistent with its purpose and with FinCEN's objective to create a highly useful database.

Relatedly, FinCEN considered the comments maintaining that the definition of ''substantial control'' might be inconsistent with other federal statutes and regulations that use ''control'' concepts. While definitions of ''control'' found elsewhere in the United States Code and the Code of Federal Regulations can be informative, they are not dispositive here. FinCEN is charged with clarifying the meaning of ''substantial control'' as used in 31 U.S.C. 5336(a)(3)(A)(i) to define what constitutes a ''beneficial owner'' for purposes of implementing the CTA. ''*Substantial* control'' in the context of beneficial ownership is not necessarily identical to ''control'' in other contexts. Through the use of the term ''substantial control'' and the statutory structure built around it, the CTA clearly manifests an expectation of a reporting requirement that accounts for a wide array of avenues of control.[159] FinCEN reviewed a regulatory definition of ''control'' used by the Securities and Exchange Commission,[160] for example, but found that particular definition to be too narrowly focused for this purpose. Even so, it bears noting that the final rule's definition of ''substantial control'' overlaps in certain respects with some of the federal ''control'' provisions raised in the comments.[161]

FinCEN also considered a comment that suggested adopting an iterative approach in which the rule would initially start with an approach comparable to the 2016 CDD Rule, with an expectation of amendments over time to expand the number of individuals that could be reported as beneficial owners under the ''substantial control'' definition. In addition to the threshold issue that the CTA mandates the identification of ''*each* beneficial owner,'' [162] FinCEN believes that such an approach would ultimately lead to greater burdens and confusion for reporting companies, which would need

[152] 31 CFR 1010.230(d)(2).

[153] *See, e.g.,* 31 U.S.C. 5336(b)(1)(F)(iv)(I)–(II) (''In promulgating the [BOI] regulations . . . , the Secretary of the Treasury shall, to the greatest extent practicable[,] . . . collect [BOI] . . . in a form and manner that ensures the information is *highly useful* in—(I) facilitating important national security, intelligence, and law enforcement activities; and (II) confirming beneficial ownership information provided to financial institutions to facilitate . . . compliance . . . .'' (emphasis added)); 31 U.S.C. 5336(b)(4)(B)(ii) (''The Secretary of the Treasury shall . . . in promulgating the regulations[,] . . . to the extent practicable, . . . ensure the beneficial ownership information reported to FinCEN is *accurate, complete, and highly useful.* ''(emphasis added)).

[154] *See, e.g.,* 5 U.S.C. 8471(1), (3), (4) (defining ''beneficiary,'' ''participant,'' and ''person'' each as ''an individual . . .''); 12 U.S.C. 3423(a)(1)(A), (J), (L)–(N) (defining ''Bank Secrecy officer,'' ''insurance producer,'' ''investment adviser representative,'' ''registered representative,'' and ''senior citizen'' each as ''an individual . . .''); 31 U.S.C. 3730(e)(4)(B) (defining ''original source'' as ''an individual . . .''); 31 U.S.C. 3801(a)(4) (defining ''investigating official'' as ''an individual . . .''); 42 U.S.C. 12713(b)(1)–(3) (defining ''displaced homemaker,'' ''first-time homebuyer,'' and ''single parent'' each as ''an individual . . .'').

[155] 31 U.S.C. 5336(a)(3)(A) (emphasis added).

[156] 31 U.S.C. 5336(b)(2)(A) (emphasis added).

[157] *See, e.g.,* 5 U.S.C. 8471(1), (3), (4) (defining ''beneficiary,'' ''participant,'' and ''person'' each as ''an individual . . .''); 12 U.S.C. 3423(a)(1)(A), (J), (L)–(N) (defining ''Bank Secrecy officer,'' ''insurance producer,'' ''investment adviser representative,'' ''registered representative,'' and ''senior citizen'' each as ''an individual . . .''); 31 U.S.C. 3730(e)(4)(B) (defining ''original source'' as ''an individual . . .''); 31 U.S.C. 3801(a)(4) (defining ''investigating official'' as ''an individual . . .''); 42 U.S.C. 12713(b)(1)–(3) (defining ''displaced homemaker,'' ''first-time homebuyer,'' and ''single parent'' each as ''an individual . . .'').

[158] *See* Public Law 116–283, Section 6402(2)–(4).

[159] *See, e.g.,* 31 U.S.C. 5336(a)(3)(A), (b)(1)(F)(iv), (b)(4)(B)(ii).

[160] 17 CFR 230.405 (defining ''control'' as ''the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract, or otherwise'').

[161] *E.g.,* 50 U.S.C. 4565(a)(3) (''direct or indirect,'' ''exercised or not exercised,'' ''to determine, direct, or decide important matters affecting an entity''); 17 CFR 230.405 (''direct or indirect,'' ''possession . . . of the power to direct or cause the direction of the management and policies,'' ''or otherwise'').

[162] 31 U.S.C. 5336(b)(2)(A) (emphasis added).

to repeatedly commit additional resources to understand the changing regulatory landscape. Moreover, it would lead to a less effective database. One shortcoming of the 2016 CDD Rule is that it omits persons that have substantial control of a reporting company, but are not reported because another party has already been reported as having substantial control. Furthermore, FinCEN notes that the definition of reporting company applies only to legal entities that have 20 or fewer employees and less than $5 million in gross receipts or sales as reflected in the previous year's federal tax returns, and that do not otherwise benefit from the exemptions described in the regulations. While size and complexity do not have to go hand in hand, FinCEN assesses that in general smaller entities have less complex ownership and control structures, so the definition of reporting company tends to limit the potential number of beneficial owners who would exercise substantial control at a given reporting company.

The final rule also renumbers 31 CFR 1010.380(d)(2), ''Direct or Indirect Exercise of Substantial Control,'' as 31 CFR 1010.380(d)(1)(ii) and makes certain modifications to the paragraph. First, the final rule inserts the clause ''including as a trustee of a trust or similar arrangement'' into the introductory text in paragraph (d)(1)(ii). This addition underscores that the trustee of a trust or similar arrangement can exercise substantial control over a reporting company through the types of relationships outlined in the paragraph. Depending on the particular facts and circumstances, trusts may serve as a mechanism for the exercise of substantial control. Furthermore, ''trusts or similar arrangements'' can take a wide range of forms. Accordingly, FinCEN finds it appropriate—and directly responsive to comments that requested clarification on this point—to specify that a trustee of a trust can, in fact, exercise substantial control over a reporting company through the exercise of his or her powers as a trustee over the corpus of the trust, for example, by exercising control rights associated with shares held in trust.

Second, the final rule individually enumerates the non-exclusive list of means of exercising substantial control described in final paragraph (d)(1)(ii)(A)–(F) (rather than listing them in a single block of text, as in the proposed paragraph (d)(2)), without making additional substantive changes. The final rule also deletes the phrase ''dominant minority'' in subparagraph (d)(1)(ii)(B) to conform to the same deletion made in paragraph (d)(1)(i)(C). In the interests of clarity, the provision now refers to ''a majority of the voting power or voting rights of the reporting company.'' The final rule also removes as redundant the last sentence in proposed 31 CFR 1010.380(d)(2), which stated that having the right or ability to exercise substantial control was equivalent to the exercise of such substantial control.

Finally, a number of comments expressed concern that the perceived complexity of the ''substantial control'' definition (as well as the definition of ''ownership interest'') would make it difficult and burdensome for reporting companies to apply that definition to their own circumstances and determine who their beneficial owners are. FinCEN assesses, however, that applying the beneficial owner rules will be a straightforward exercise for many reporting companies. Most reporting companies will have relatively small numbers of (or no) employees or simple management and ownership structures. The exemptions from the definition of ''reporting company,'' particularly the exemption for large operating companies, tend to exclude larger and more complex entities from the beneficial ownership reporting requirements. While some smaller entities may have similarly complex management and ownership structures, FinCEN expects that most smaller entities with conventional structures will be able to readily identify their beneficial owners. The final rule was carefully drafted with the objective of minimizing potential burden on reporting entities while also pursuing the other goals mandated by the CTA.[163]

More broadly, the definition of ''beneficial owner'' under final 31 CFR 1010.380(d) specifies multiple ways in which an individual may be a beneficial owner of a reporting company, in order to encompass a wide range of possible scenarios where substantial control may be exercised, or where ownership interests may be owned or controlled directly or indirectly through complex arrangements. However, in cases where a reporting company has straightforward operations and a simple and direct ownership structure, the application of paragraph (d) is similarly straightforward. For example, suppose that George and Winona, husband and wife, and their son Sam each directly own one-third of Farragut Co., a corporation through which they run their small family farm. Sam serves as the president, Winona is the chief operating officer, and George is the general counsel. There are no other individuals who serve as senior officers or exercise substantial control through any other arrangement. Here, George, Winona, and Sam would be the only beneficial owners of the reporting company. If Sam steps down from his role as president but maintains his ownership interest, and his brother James is named president of Farragut Co., then James would also be a beneficial owner.

As another example, suppose Sarah and Skyler each directly own fifty percent of Adelaide's Cement, Inc., a small, closely held construction supply company. Sarah is the president, Skyler is chief executive officer, and Adelaide's Cement has no other officers. Nathan has been manager and chief clerk for forty years, responsible for the day-to-day operations and staffing of the company. Nathan has the authority to hire floor staff, but not senior officers. He controls the petty cash and payroll disbursements and is authorized to be the sole signatory for checks under the amount of $5,000. He does not have authority to make major expenditures or substantially influence the overall direction of the company. In this scenario, Sarah and Skyler are beneficial owners, and Nathan is *not* a beneficial owner.

While the final rule should be straightforward to apply in a wide range of similar cases, FinCEN recognizes that there will be circumstances in which reporting companies are structured or managed in a way that generates more complexity or uncertainty regarding the scope of the application of the rule. Exercising substantial control or owning ownership interests through an intermediate entity,[164] conferring special rights in connection with a financing arrangement,[165] issuing puts, calls, straddles, or other options,[166] and other circumstances may make it harder to determine beneficial owners. In such circumstances, however, reporting companies or their beneficial owners ordinarily seek the advice of tax and legal professionals to assess the advantages and disadvantages of such business choices and choose to enter into those arrangements despite the additional complexity they entail because they confer benefits that more than compensate. In these cases, FinCEN expects that the reporting requirements under the final rule will impose some additional burdens, but that these additional burdens should not be unusual for businesses that make decisions which increase the

[163] *See* 31 U.S.C. 5336(b)(1)(F), (b)(4)(B).

[164] 31 CFR 1010.380(d)(1)(ii)(D), (2)(ii)(D).

[165] 31 CFR 1010.380(d)(1)(ii)(C).

[166] 31 CFR 1010.380(d)(2)(i)(D).

complexity of a company's operations, management, or financing. While FinCEN has worked to avoid unnecessary burdens on reporting companies, fulfilling the CTA's directives to report all beneficial owners means that certain compliance burdens may rise with the increasing structural complexity of a given entity.

ii. Ownership Interests

Proposed Rule. The CTA defines a beneficial owner to include ''an individual who . . . owns or controls not less than 25 percent of the ownership interests of the entity.'' [167] The proposed rule incorporated that definition and further specified its meaning in 31 CFR 1010.380(d)(3). Proposed 31 CFR 1010.380(d)(3)(i) provided 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 would be included if they enable the holder to exercise the same rights as one of the specified types of equity or other interests, including if they enable the holder to convert the instrument into one of the specified types of equity or other interests.

Proposed 31 CFR 1010.380(d)(3)(ii) also identified ways in which an individual may ''own or control'' such ownership interests. It restated statutory language that an individual may own or control an ownership interest directly or indirectly. It also gave a non-exhaustive list of examples to further specify how an individual can own or control ownership interests through a variety of means. In particular, proposed 31 CFR 1010.380(d)(3)(ii)(C) specified how an individual may directly or indirectly own or control an ownership interest that is held in a trust or similar arrangement.

Proposed 31 CFR 1010.380(d)(3)(iii) concluded the ownership interest section with guidance on determining whether an individual owns or controls 25 percent of the ownership interests of a reporting company.

Comments Received. Some commenters supported the proposed definition of ownership interests, noting that it is broader than mere equity ownership and provides a comprehensive list of forms of ownership interest. Other commenters expressed a preference for the 25 percent equity interest threshold reflected in the 2016 CDD Rule to promote consistency with existing requirements. Commenters expressed concerns with the various considerations, such as debt and contingent interests, reflected in the proposed rule for the calculation of ownership interests and asserted that these considerations were unnecessarily complicated. Some of these commenters suggested that some (or all) types of convertible instruments should be excluded from the definition of ownership interests or that only immediately convertible interests should be included within the meaning of the term.

Some commenters also noted technical concerns or suggested technical changes to the proposed definition. At least one commenter, for example, noted that the inclusion in proposed 31 CFR 1010.380(d)(3)(i)(A) of a ''certificate of interest or participation in any profit sharing agreement'' in the calculation of ownership interests could sweep in a company's bonus, profit-sharing, or 401(k) plan contributions in ways that could be complex to calculate over time and are not typically thought of as ownership interests. Other commenters suggested including statutory language specifying that an individual can own or control an ownership interest ''through any contract, arrangement, understanding, relationship or otherwise,'' adding a catch-all provision to capture unanticipated ownership structures, addressing a number of specific trust scenarios, and clarifying the meaning of ''indirect'' interests and attribution rules for spouses, relatives, and others.

A number of other comments took issue with aspects of the mechanisms that the proposed rule set forth for calculating percentage of ownership interest. These comments are summarized in connection with the specific provisions of the final rule that address the issues they raise.

Final Rule. The final 31 CFR 1010.380(d)(2) adopts in large part the proposed provisions regarding ownership interests, with certain clarifications. Among the clarifying changes to the proposed rule, the final rule includes subject headings for each of the subparagraphs of 31 CFR 1010.380(d)(2) to clarify the scope of each subparagraph.

First, 31 CFR 1010.380(d)(2)(i), now entitled ''Definition of Ownership Interest,'' has been revised to focus solely on types of arrangements that convey ownership interests (*e.g.,* equity, convertible instruments, stocks, etc.), rather than by reference to legal entities in which ownership interests are held. This reflects the wide variety of potential reporting company structures and the potential for evasion inherent in specifying detailed rules for each structure. FinCEN has also amended the final clause of 31 CFR 1010.380(d)(2)(i)(A) to make clearer, as suggested by some commenters, that the listed forms of ownership (like equity or stocks) are independent of voting power or voting rights (which may be relevant to the related but conceptually distinct concept of substantial control). While often associated with ownership, these rights are not necessary to ownership and are better addressed through the substantial control prong of the definition of beneficial owner.

FinCEN has also deleted the reference to proprietorship interests in the proposed 31 CFR 1010.380(d)(2)(i)(C), as the reference is superfluous and commenters found the term to be unclear. The final rule also deletes the clause ''certificate of interest or participation in any profit sharing agreement'' in 31 CFR 1010.380(d)(2)(i)(A). Although this term has been part of securities law since the Securities Act of 1933, applying it to particular facts can be complex and could make the task of identifying ownership interests significantly more difficult without producing a corresponding increase in useful information about beneficial ownership.[168] FinCEN believes that the clause ''capital and profit interest'' adequately covers the concepts of ownership interests reflected in such profit-sharing agreements, and a specific reference to certificates of interest will not add sufficient clarity to outweigh the complexity of applying the term.

Commenters also asked FinCEN to exclude convertible instruments, particularly those that are not immediately convertible, or whose conversion is subject to a range of conditions. FinCEN is declining to make this change. Convertible instruments are widely used and, particularly when the holder may convert the interest at will,

[167] 31 U.S.C. 5336(a)(3)(A)(ii).

[168] *See, e.g., Tchrepnin* v. *Knight,* 389 U.S. 332, 338 (1967) (finding investment could constitute certificates of interest and noting that ''the reach of the [Securities] Act [of 1933] does not stop with the obvious and commonplace'') (internal quotation marks omitted); *Foxfield Villa Assocs.* v. *Robben,* 967 F.3d 1082, 1090–1100 (10th Cir. 2020) (complex litigation requiring three part test, with one part requiring six control-related factors, to determine whether certain LLC interests met the definition); *Simon* v. *Fribourg,* 650 F. Supp. 319, 321 (D. Minn. 1986) (''[T]here is little authority to suggest that a 'certificate of interest or participation in a profit-sharing agreement' is a term so commonly understood and an agreement so easy to identify that it should be 'provable by its name and characteristics.'' (internal citations omitted)).

they are tantamount to equity ownership. Even if the instrument is not immediately convertible, the potential conversion of the instrument at a later time provides significant opportunities for exerting influence and maintaining an economic interest tantamount to ownership. Excluding these instruments would create significant room for potential evasion of reporting requirements.

Commenters raised further concerns about certain types of convertible interests where the amount of the equity that the holder will receive is difficult to calculate or depends on conditions at the precise time when the interest is converted. One commenter gave the example of limited partnership or limited liability company structures often referred to as a ''waterfall,'' where a variety of different classes of interests have varying entitlements to the capital and profit of the enterprise that may be difficult to calculate as a percentage of all ownership interests. Another commenter pointed to Simple Agreements for Future Equity (a ''SAFE''), in which an investor agrees to provide funding, typically to a start-up company, that will convert into equity according to a formula based upon conditions when a predetermined event occurs, such as an initial public offering. It may be difficult to calculate how much equity will be received when the relevant condition occurs, and if the condition does not occur, the investor may receive no equity at all. Although FinCEN recognizes that such structures may complicate the calculation of the percentage of ownership interests, investors and companies who establish such structures do so in the expectation that they will receive a certain level of capital and profit interests. Moreover, to aid this reporting, FinCEN is clarifying the calculation of ownership interests, and the timing of such calculations, and explains that clarification in connection with the discussion of the ''Calculation of the Total Ownership Interests of the Reporting Company'' in Section III.C.ii. below.

Lastly, the final rule modifies 31 CFR 1010.380(d)(2)(i)(D) to address concerns raised by commenters that a reporting company may be unaware of situations where a third party has created an option or derivative related to the stock or other ownership interests in the reporting company (sometimes for a very limited time period). Although most reporting companies are not likely to be affected, FinCEN recognizes that market makers can create options and derivatives without involvement by reporting companies and owners, and in such cases, reporting companies will not have knowledge of the options or derivatives, or any mechanism to track such options and derivatives. In such cases, it would impose an unwarranted burden on reporting companies that are not otherwise aware of such options and derivatives to identify all of them. The final rule makes clear, however, that reporting companies will be required to take into account such options and derivatives where they are aware that they exist.

The final rule also adds a new 31 CFR 1010.380(d)(2)(i)(E) to include a catch-all provision to the definition of ownership interest to include ''[a]ny other instrument, contract, arrangement, understanding, relationship, or other mechanism used to establish ownership.'' As commenters noted, such a provision is consistent with the statutory language in 31 U.S.C. 5336(a)(3)(A) and is designed to ensure that any individual or entity that establishes an ownership interest in a reporting company through a contractual or other relationship not described in subparagraphs (A) through (E) of 31 CFR 1010.380(d)(2)(i) is subject to the beneficial owner reporting requirements.

Second, the final rule amends several paragraphs in 31 CFR 1010.380(d)(2)(ii), now entitled ''Ownership or Control of Ownership Interest,'' to address means through which a beneficial owner can ''own or control'' an ownership interest. First, the final rule replaces the clause ''variety of means'' with the more specific clause ''contract, arrangement, understanding, or other relationship,'' as used in the CTA, to better reflect the full range of channels through which an individual or entity may be able to directly or indirectly have ownership of a reporting company. Second, the final rule replaces the clause in paragraph (ii)(B) that read ''through control of such ownership interest owned by another individual'' with the more straightforward clause, ''through another individual acting as a nominee, intermediary, custodian, or agent on behalf of such individual,'' to describe the specific types of relationships through which ownership of ownership interests can occur. Third, the final rule identifies in a new paragraph (d)(2)(ii)(D) ownership or control of intermediary entities that own or control a reporting company as a specific means through which an individual may directly or indirectly own or control an ownership interest of a reporting company. Paragraph (D) was inadvertently listed in proposed 31 CFR 1010.380(d)(3)(ii)(C)(3)(i) as a means through which a grantor or settlor has the right to revoke the trust. The final rule also deletes proposed 31 CFR 1010.380(d)(3)(ii)(C)(*3*)(*ii*), which was also inadvertently listed in the trust paragraph; a similar clause is now included in the introductory paragraph of the final paragraph (d)(2) that identifies the variety of means or arrangements through which an individual may own or control ownership interests in a reporting company. In addition, FinCEN considered whether further clarity is needed with respect to constructive ownership, or attribution—for example, by spouses, children, or other relatives, by reference to other statutory or regulatory authorities such as the Internal Revenue Code or Office of Government Ethics rules—but determined that the terms ''ownership interest'' and ''substantial control'' are sufficiently comprehensive and other references were likely to be over-inclusive and create significant burdens on reporting companies.

The final rule does not change the provision in the proposed rule that identified specific individuals in trust and similar arrangements whom a reporting company could treat as owners of 25 percent of the ownership interests of the reporting company by virtue of their relationship to the trust that holds those ownership interests. FinCEN acknowledges the comments that objected to the proposed language on several grounds, particularly: that it is unclear whether the list of individuals who may own or control an ownership interest held in trust is illustrative or exhaustive; that the proposed language does not adequately address numerous types of trust arrangements; that it is unclear which parties in a trust arrangement should be reported as a beneficial owner when the regulatory language suggests that more than one individual could be considered to own or control the same ownership interests held in trust; and that the proposed language does not align with other sources of authority concerning trusts, such as tax law.[169]

[169] Commenters have criticized the proposed regulations for not covering a wider range of trust scenarios. For instance, at least one commenter noted that the regulatory language does not specifically address trust arrangements with multiple beneficiaries. One commenter provided several examples of trust arrangements in which individuals might have beneficial interests in trust assets but might not be required to report under the regulations. Another commenter asked if the language covered such persons as trust protectors and advisors, and requested clarification on how to apply the regulation to a trust in which decisions concerning distributions were made by committee. Further, one commenter suggested that FinCEN entirely exclude the language regarding individuals with the authority to dispose of trust assets from the

Continued

After considering these comments, however, FinCEN adopts the proposed rule without change. Assets, such as the ownership interests of a reporting company, can be held in trust. The final rule identifies the trustee as an individual who will be deemed to control trust assets for the purpose of determining which individuals own or control 25 percent of the ownership interests of the reporting company. In addition to trustees, the final rule specifies that other individuals with authority to control or dispose of trust assets are considered to own or control the ownership interests in a reporting company that are held in trust. The final rule identifies circumstances in which ownership interests held in trust will be considered as owned or controlled by a beneficiary: if the beneficiary is the sole permissible recipient of income and principal from the trust, or if the beneficiary has the right to demand a distribution of, or withdraw substantially all, of the assets in the trust. In addition, trust assets will be considered as owned or controlled by a grantor or settlor who has the right to revoke the trust or withdraw its assets. One consequence of this—to confirm the reading that one comment suggested was possible and requested clarification on—is that, depending on the specifics of the trust arrangement, the ownership interests held in trust could be considered simultaneously as owned or controlled by multiple parties in a trust arrangement.[170]

To provide clarity, FinCEN has sought to identify specific scenarios in which individuals can be considered to own or control ownership interests of a reporting company held in trust. FinCEN has also made clear that those are specific examples of the more general principle, stated in the introductory text in (d)(2)(ii), that an individual ''may directly or indirectly own or control an ownership interest of a reporting company through any contract, arrangement, understanding, relationship, or otherwise.'' As one commenter noted, however, trusts arrangements can vary significantly in form, so the examples in the final rule do not address all applications of the general principle. The final rule is different, less specific, and less prescriptive than section 318(a)(2)(B) of the Internal Revenue Code (which some commenters have urged FinCEN to adopt and others have urged FinCEN to disclaim). FinCEN believes that the final regulatory language is more closely tailored to the purpose and language of the CTA than rules governing income tax liability.

Third, 31 CFR 1010.380(d)(3)(iii), now entitled ''Calculation of the Total Ownership Interests of the Reporting Company,'' has been revised in order to provide additional clarity and guidance. The NPRM required that the percentage of ownership interests owned or controlled by an individual be calculated by taking all of the individual's ownership interests, aggregated across all types of ownership interests that the individual may hold, and dividing them by the total undiluted ownership interests of the reporting company, also aggregated across all types of interests.

Commenters raised concerns about how to conduct this calculation. One commenter thought the term undiluted ownership interests was unclear and difficult to apply. Two commenters raised concerns about how to aggregate different types of ownership interests, particularly in the context of LLCs and start-up companies. This concern aligned with other commenters' concern about contingent interests that may depend upon future events to determine their value. Numerous commenters suggested alternatives, such as the formulation used in the 2016 CDD Rule, SEC rules, and clarifying changes to the NPRM definition.

The final rule addresses these concerns by providing specific guidance for certain types of entities and convertible interests. In all circumstances, the final rule clarifies that the individual's total ownership interests are compared to the outstanding ownership interests of the reporting company, as specified in the proposed rule. But more specifically for reporting companies that issue capital and profit interests, including entities taxed as partnerships, the final rule clarifies that the individual's total capital and profit interests are compared to the total outstanding capital and profit interests of the reporting company. For corporations, entities taxed as corporations, and other entities that issue shares, the final rule clarifies that a ''vote or value'' approach should be used. Under this approach, the individual's percentage of ownership interests is 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. These rules are similar to rules used by entities for federal tax purposes. If neither the calculation for entities that issue capital and profit interests nor the calculation for entities that issue shares can be performed with reasonable certainty, the final rule contains a catch-all provision: the individual is deemed to hold 25 percent or more of the total ownership interests in the reporting company if the individual owns or controls 25 percent or more of any class or type of ownership interests. All of these calculations are performed on the ownership interests as they stand at the time of the calculation. Options and similar interests are treated as though exercised when the calculation is conducted.

The final rule balances commenters' concerns about uncertainty in applying the rule against the need for flexibility to accommodate a wide range of ownership structures while conducting the calculation required by the CTA's 25% threshold. With the wide diversity of ownership structures that reporting companies may have, FinCEN recognizes that it may be difficult to aggregate all of these interests in all circumstances. But this difficulty is inherent in the CTA's definition of a beneficial owner as an individual who owns or controls at least 25 percent of ''the ownership interests of the entity,'' a category that encompasses more than one type or class of interest. The final rule aims to minimize the burden on reporting companies by providing guidance for the most common manifestations of the most common structures—LLCs, partnerships, corporations, and similar entities—and providing a simplified catch-all for other structures or situations where the other calculations cannot easily be performed. While the catch-all may be potentially over- or under-inclusive depending upon how an entity structures its classes of ownership interests, it provides the most administrable rule for less common ownership structures. FinCEN believes that the final rule strikes the appropriate balance between clarity and flexibility for the wide range of potential ownership structures, and the final rule may be supplemented with additional FAQs and guidance to the extent greater clarity is needed on particular facts and circumstances.

Similarly, the final rule provides greater clarity for holders of contingent interests. Options and similar interests are treated as though exercised and

regulations, and one commenter supported the inclusion of this language in modified form.

[170] Such an outcome is not unique to the circumstance of trusts. For example, joint ownership of an undivided interest in ownership interests of a reporting company can result in the same assets being attributed to all of the joint owners. *See* 31 CFR 1010.380(d)(2)(ii)(A).

added to the calculation of an individual's total ownership interests, and if this calculation cannot be conducted with reasonable certainty, the options and similar interests are treated as exercised for purposes of the catch-all rule. It should be noted that the present value of a contingent interest is irrelevant to the calculation of percentage of ownership interests. For example, if the exercise of an option or similar interest at the present time would result in an individual holding 26 percent of the profit interests in an entity, the individual would be deemed to own or control 25 percent or more of the ownership interests in the reporting company even if the value of those profit interests is indeterminate or negligible at the present time. While commenters have raised concerns about the burden involved in updating such calculations, such updates are necessary to ensure the accuracy of the information reported to FinCEN. Moreover, these challenges should be relatively infrequent because only a change that results in the individual moving above or below 25 percent of total ownership interests will change the reporting obligation. The particular percentage of any individual's ownership interest need not be reported.

While other means of assessing ownership interests suggested by commenters such as the 2016 CDD Rule or SEC rules may be more familiar to some, FinCEN does not believe that any of these definitions both meet the requirement of the CTA for a calculation of total ownership interests for each reporting company and adequately balance the need for guidance and flexibility in conducting that calculation. The final rule does not include changes proposed by commenters to conform the definition of ownership interests to the 2016 CDD Rule. In the 2016 CDD Rule, only ''equity interests'' are relevant, joint ownership is not explicitly addressed, and assets in trust are deemed to be owned by their trustees.[171]

Many commenters urged FinCEN to adopt the 2016 CDD Rule approach to trusts. As the agency explained in the NPRM, the CTA departs from the 2016 CDD Rule in meaningful ways. For example, the CTA's definition of a beneficial owner, unlike the 2016 CDD Rule, does not create a numerical limit on the beneficial owners that a reporting company must report.[172] Rather, the CTA mandates that FinCEN collect information on ''*each* beneficial owner'' of a reporting company. The CTA also has the objective of establishing a comprehensive BOI database of the beneficial owners of reporting companies.[173] By contrast, the 2016 CDD Rule requires financial institutions to identify for their legal entity accountholders one control person (functionally a representative of all control persons, most of whom are therefore not named) and no more than four equity owners. Additionally, Congress's decision to require FinCEN to revise the 2016 CDD Rule to bring it into conformance with the CTA suggests Congress intentionally departed from the 2016 CDD Rule's requirements.[174] Commenters have not offered persuasive reasons to believe this is not the case. FinCEN therefore has decided not to follow the 2016 CDD Rule approach.

iii. Exceptions to Definition of Beneficial Owner

31 U.S.C. 5336(a)(3)(B) includes five exceptions to the definition of beneficial owner, for: a minor child, provided that a parent or guardian's information is reported; an individual acting as a nominee, intermediary, custodian, or agent on behalf of another individual; an individual acting solely as an employee of a reporting company in specified circumstances; an individual whose only interest in a reporting company is a future interest through a right of inheritance; and a creditor of a reporting company. Proposed 31 CFR 1010.380(d)(4) incorporated the statutory exceptions with minor clarifications and sought comments on whether the proposed rules implementing these statutory exceptions are sufficiently clear, and whether any of these rules require further clarification.

A number of commenters sought clarification or proposed changes to each of the exceptions. These comments are discussed in connection with each exception in this section. In addition, commenters proposed the following additional exclusions to the ''beneficial owner'' definition: trust beneficiaries, particularly those that might be unaware of their beneficiary status; trustees for employee stock ownership plans; and agents declared to the IRS. However, the CTA specifies the specific exceptions to the definition of ''beneficial owner'' and does not provide for the addition of others. FinCEN accordingly does not extend the list. Nevertheless, some of the specific concerns raised by the commenters are addressed in the final rule and this discussion, and FinCEN will consider the need for guidance or FAQs to evaluate particular circumstances as they arise.

a. Minor Children

Proposed Rule. In the case of minor children, consistent with the CTA,[175] proposed 31 CFR 1010.380(d)(4)(i) stated that the term ''beneficial owner'' does not include a minor child, provided that the reporting company reports the required information of the minor child's parent or legal guardian. It also clarified that ''minor child'' is defined under the law of the state or Indian tribe in which a domestic reporting company is created or in which a foreign reporting company is first registered. Proposed 31 CFR 1010.380(b)(3)(ii) included an additional clarification that a reporting company would need to indicate when the information provided relates to a parent or legal guardian.

Comments Received. One commenter questioned whether information about a parent or guardian is necessary and questioned the value of such information to law enforcement. The commenter also noted that other legal authorities, including fiduciary laws, as well as the underlying legal instrument, would govern whether and to what extent a parent or guardian can control funds that may belong to a minor child as a beneficial owner.

Final Rule. FinCEN is adopting the requirement as proposed. The CTA specifically exempts a minor child from the definition of ''beneficial owner'' provided that the information of the minor child's parent or guardian is reported.[176] In view of this statutory direction, FinCEN does not eliminate the requirement that information of the parent or guardian of the minor child must be reported in the event a minor child's information is not reported.

In addition, FinCEN emphasizes that a reporting company must submit an updated report when a minor child reaches the age of majority (again, 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), given that such an event would constitute a change with respect to information submitted to FinCEN requiring an updated report. For the sake of clarity, FinCEN has spelled out this requirement by adding 31 CFR 1010.380(a)(2)(iv), which notes that the

[171] *See* 31 CFR 1010.230(d)(3).

[172] 31 U.S.C. 5336(a)(3)(A).

[173] 31 U.S.C. 5336(b)(2)(A) (emphasis added).

[174] *See* CTA, Section 6403(d).

[175] 31 U.S.C. 5336(a)(3)(B)(i).

[176] *See id.* (''The term 'beneficial owner' . . . does not include . . . a minor child, as defined in the State in which the entity is formed, if the information of the parent or guardian of the minor child is reported in accordance with this section . . . .'').

date on which the minor child attains the age of majority is the triggering date for purposes of the requirements for filing an updated report under 31 CFR 1010.380(a)(2).

b. Nominees, Intermediaries, Custodians, and Agents

Proposed Rule. Proposed 31 CFR 1010.380(d)(4)(ii) reflected the exception provided in the CTA for an individual acting as a nominee, intermediary, custodian, or agent on behalf of another individual.[177] Under this exception, reporting companies must report real parties in interest who exercise control indirectly, but not those who merely act on another individual's behalf in one of the specified capacities.

Comments Received. Multiple commenters expressed support for the proposed rule, and commenters generally did not oppose or seek clarification of this provision. However, under the rubric of proposed 31 CFR 1010.380(d)(1) (concerning what it means to exercise ''substantial control'' such that an individual qualifies as a beneficial owner), some commenters inquired about the treatment of certain retained professionals with an agency relationship, such as tax and legal professionals who have been designated as an agent under IRS Form 2848 (Power of Attorney and Declaration of Representative), whom these commenters viewed as exercising substantial influence in practical terms when they perform services within the scope of their duties.

Final Rule. FinCEN is adopting 31 CFR 1010.380(d)(4)(ii) as proposed but renumbered as 31 CFR 1010.380(d)(3)(ii). FinCEN emphasizes the obligation of a reporting company to report identifying information of the individual on whose behalf a nominee, intermediary, custodian, or agent is acting. However, as explained in Section III.C.i regarding the treatment of tax professionals and other similarly situated professionals, such a professional would not need to be reported if the individual is acting as a nominee, intermediary, custodian, or agent of an individual who is reported. Moreover, as explained in Section III.C.i regarding the application of final 31 CFR 1010.380(d)(1)(i)(C), FinCEN does not envision that the performance of ordinary, arms-length advisory or other contractual services to a reporting company would provide an individual with the power to direct or determine, or have substantial influence over, important decisions of a reporting company.

c. Employees

Proposed Rule. Proposed 31 CFR 1010.380(d)(4)(iii) implemented the statutory exemption from the definition of ''beneficial owner'' for 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 that person's employment status.[178] The proposed rule adopted the CTA's language and supplemented it in two respects: (1) the proposed rule added the word ''substantial'' to modify ''control,'' to clarify that the control referenced in the exception is the same type of ''substantial control'' over a reporting company used in the definition of ''beneficial owner'' and defined in the regulations; and (2) the proposed rule clarified that a person acting as a senior officer of a reporting company would not qualify for the exception.

Comments Received. Some commenters expressed concern that the employee exception could erase any differences between the treatment of senior officers in the proposed definition of ''substantial control'' and the treatment of officers under the 2016 CDD Rule. Proposed 31 CFR 1010.380(d)(1) would classify a ''senior officer'' (defined in proposed 31 CFR 1010.380(f)(8) as an individual holding various senior positions, exercising such authority, or performing a similar function) as having substantial control over an entity. Similarly, the 2016 CDD Rule requires customers to identify one individual that directs the business of the entity, such as a chief executive officer, chief financial officer, or chief operating officer.[179] The commenters expressed the view that such officers would also constitute employees and could be covered by the employee exception, which would render the beneficial ownership registry under-inclusive.

Final Rule. The final rule adopts the proposed 31 CFR 1010.380(d)(4)(iii) with minor clarifications to minimize the potential confusion noted by commenters. The CTA makes clear that individuals who benefit from this exception must be acting ''*solely* as an employee'' and derive control or economic benefits ''*solely* from the[ir] employment status.''[180] Accordingly, the final rule specifically provides that individuals can be treated as falling within the employee exception where they are ''acting solely as an employee'' and where their ''control over or economic benefits from'' a reporting company are derived ''solely'' from their employment status—but only if they are not senior officers of a company exercising substantial control under 31 CFR 1010.380(d)(1)(i)(A). Senior officers, as defined in 31 CFR 1010.380(f)(8), perform functions that inherently involve substantial control and go beyond mere employee status. As the CTA makes clear, the employee exception is intended to reach employees who might otherwise meet the criteria for a ''beneficial owner'' based *solely* on their limited, ordinary employment activities. But if senior officers were considered to be employees in this sense, it would swallow the substantial control provision for senior officers who exercise a great deal of control over a reporting company, and thus undermine FinCEN's ability to determine who in fact exercises substantial control over an entity.

d. Inheritance

Proposed Rule. Proposed 31 CFR 1010.380(d)(4)(iv) clarified that the inheritor exception in the CTA 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. The CTA's definition of ''beneficial owner'' excludes ''an individual whose only interest'' in the entity ''is through a right of inheritance.''[181] In proposing this clarification to the inheritor exception, FinCEN sought to clarify that 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 has acquired an ownership interest through another means.

Comments Received. Commenters asked that FinCEN provide more clarity with respect to the application of the inheritor exception. One commenter suggested providing a specific definition of a ''right of inheritance,'' which could, for example, describe situations in which the inheritor exception would apply in the probate process. Another commenter suggested outlining the mechanisms that would constitute ''inheritance'' under this exception.

Final Rule. The final rule adopts the proposed 31 CFR 1010.380(d)(4)(iv) without change, other than renumbering as 31 CFR 1010.380(d)(3)(iv). As stated

[177] *See* 31 U.S.C. 5336(a)(3)(B)(ii).

[178] 31 U.S.C. 5336(a)(3)(B)(iii).

[179] 31 CFR 1010.230(d).

[180] 31 U.S.C. 5336(a)(3)(B)(iii) (emphases added).

[181] 31 U.S.C. 5336(a)(3)(B)(iv).

in the proposed rule, FinCEN emphasizes that once an individual has acquired an ownership interest in an entity through inheritance, that individual owns that ownership interest and is potentially subject to the beneficial-owner reporting requirements. Individuals who may in the future come to own ownership interests in an entity through a right of inheritance do not have ownership interests until the inheritance occurs. Such a future or contingent interest may exist through wills or other probate mechanisms that solely provide a future interest in an entity. 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.

The precise moment at which an individual acquires an ownership interest in an entity through inheritance may be subject to a variety of existing legal authorities, such as the terms of a will, the terms of a trust, applicable state laws, and other valid instruments and rules. FinCEN intends the application of the inheritor exception, and the meaning of a ''right of inheritance'' in this paragraph (d)(3)(iv), to conform to the governing legal authorities. Should those authorities not provide sufficient direction for purposes of this inheritor exception, FinCEN is prepared to consider supplemental guidance or FAQs.

e. Creditors

Proposed Rule. The CTA's definition of beneficial owner excludes a creditor of a corporation, limited liability company, or other similar entity, unless the creditor meets the overall definition of beneficial owner by exercising substantial control over the entity or owning or controlling 25 percent or more of the entity's ownership interests.[182] FinCEN believes that the ''unless'' clause in the CTA language intends to create a distinction between two groups: (1) creditors exempted from reporting obligations because they are individuals who qualify as beneficial owners solely because of their status as creditors; and (2) individuals who are creditors in the sense that they hold a debt but remain obligated to report because they have additional rights or interests that render them a beneficial owner. Accordingly, as it explained in the NPRM, FinCEN proposed regulatory language intended to identify individuals who are beneficial owners solely because they are creditors. Specifically, proposed 31 CFR 1010.380(d)(4)(v) stated that an excepted 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 interest on such debt. FinCEN also explained 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 took 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 preclude that individual from claiming the creditor exception under the proposed rule's approach.

Comments Received. No commenter objected to FinCEN's reading of the CTA under which the creditor exception is only intended to apply to individuals who would otherwise be beneficial owners *solely* because of their status as a creditor. While some commenters generally supported the proposed interpretation of the creditor exception, certain commenters requested clarification as to how it would apply in specific circumstances. In particular, commenters asked FinCEN to clarify whether the exemption would cover loans to a reporting company that included provisions requiring the pledging of assets as collateral, the ability to require the voting of shares in certain circumstances, or negative covenants. Other commenters asserted that this exception as proposed would apply very rarely because it did not match commercial realities, and therefore would result in over-reporting of beneficial owners. According to these commenters, many commercial loan agreements and other forms of financing contain negative covenants and additional creditor protections that go beyond the payment of a predetermined sum of money, but these protections are not commonly thought of as ownership interests. These commentators worried that, if loans containing such protections are not included within the creditor exception, many creditors who do not regard themselves as beneficial owners might be viewed as having substantial control over their reporting-company debtors. Consequently, those reporting companies might be required to report as beneficial owners those creditors (or the beneficial owners of those creditors, if the creditors are entities).

Final Rule. The final rule revises proposed 31 CFR 1010.380(d)(4)(v) to clarify that an individual would qualify for the creditor exception based on the individual's entitlement to payment of a reporting company's indebtedness, even if there are loan covenants or other similar obligations associated with that indebtedness that are intended to secure repayment or enhance the likelihood of repayment. The rule language continues to reflect FinCEN's view that the overarching intent of the CTA was to exclude from the definition of beneficial owner an individual whose sole interest in a reporting company is as a creditor. The revisions are intended to address the point made by commenters that the interests of a creditor routinely include rights or obligations—such as the right to require the debtor to adhere to specific covenants with respect to the management of the debtor's business or the obligation to maintain the collateral securing a loan—that go significantly beyond the bare right to receive a sum of money, but are not commonly considered to amount to ownership or control of a company.

FinCEN considered a number of options for creating regulatory language that would make this point administrable, and ultimately concluded that it would be fruitless to attempt to enumerate, or even describe, the universe of creditor rights that do not amount to ownership or control. Conditioning the creditor exception on whether debt documentation is consistent with a laundry list of acceptable provisions would require a reporting company to minutely examine every debt agreement or forego any attempt to apply the creditor exception. Instead, FinCEN has chosen to describe the key characteristic of an acceptable provision: that it is intended to secure the right to receive payment or enhance the likelihood of repayment. This description encompasses the range of terms that may be reasonable for creditors to seek in different commercial contexts, while carving out attempts to evade reporting by characterizing ownership interests or unjustified control rights in a debt instrument. FinCEN understands that terms in credit agreements have not been a significant vehicle for concealing beneficial ownership interests in the past. Nevertheless, whether a term crosses the line into substantial control or ownership, and is therefore inconsistent with this exception, will depend upon the facts and circumstances of a

[182] 31 U.S.C. 5336(a)(3)(B)(v) (definition does not include ''a creditor of a corporation, limited liability company, or other similar entity, unless the creditor meets the requirements of subparagraph (A)'').

particular situation. FinCEN will consider additional guidance or FAQs, as appropriate, if there is a need to clarify how the final rule applies to specific factual circumstances.

FinCEN also considered options for regulatory language that would enumerate or describe the types of creditor rights that *do* amount to assertions of ownership or substantial control in the guise of a debt agreement. In this regard, FinCEN concluded that it would be equally challenging to try to identify specific rights that would be categorically inconsistent with the creditor exception from the definition of beneficial owner, and thus has not done so.

D. Definition of Company Applicant

Proposed Rule. Proposed 31 CFR 1010.380(e) defined the term company applicant, in the case of a domestic reporting company, as an individual who files the document that forms the entity. In the case of a foreign reporting company, it defined company applicant as an individual who files the document that first registers the entity to do business in the United States. The proposed rule further specified that a company applicant includes anyone who directs or controls the filing of the document by another.

The proposed rule took a broad approach to company applicants in order to ensure that the reporting company provides information on individuals that are responsible for the filing to form a reporting company. The proposed rule contemplated that, in many cases, the company applicant might 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. FinCEN believed that this additional information about persons directing or controlling the formation or registration of the reporting company would be highly useful to law enforcement, which might be able to draw connections between and among seemingly unrelated reporting companies, beneficial owners, and company applicants based on this additional information. FinCEN sought comments on this approach.

Comments Received. Some commenters expressed support for the proposed definition of company applicant and agreed that it would be useful to law enforcement. However, most commenters generally expressed confusion about the scope and intent of the company applicant definition. Many commenters stated that the definition was overly broad, vague, hard to administer, and burdensome. Some commenters noted that the ''directs or controls'' prong could be read to include a wide range of employees in a company formation business or a law firm, and others asked for clarification regarding how many individuals should be reported. Some commenters asked for clarity on whether paralegals, secretaries, legal assistants, lawyers, or law firms were expected to be reported. Other commenters interpreted those that ''direct or control'' the filing with a secretary of state or other similar offices to potentially include State government employees who processed the filings.

Some commenters noted that the definition does not account for modern incorporation practices, and one commenter pointed out that automated incorporation services do not require companies to interact with individuals for corporate filings or registrations. Commercial corporate service providers also requested clarification, and many suggested that employees of such entities not be reported, but rather the entity or its record liaison. Many commenters suggested alternatives. Multiple commenters proposed exemptions to the definition, such as state employees, lawyers, and those who perform ministerial functions. A few commenters suggested that the ''directs or controls'' prong be removed, noting practical challenges, including filers being unaware of whether multiple persons ''directed'' such a filing.

Final Rule. The final rule modifies 31 CFR 1010.380(e) and adds paragraph (e)(3) to further clarify the definition of company applicant and reduce unnecessary burdens. The final rule specifies that the term company applicant means the individual who directly files the document to create or register the reporting company and the individual who is primarily responsible for directing or controlling such filing if more than one individual is involved in the filing. This definition is designed to identify the individual who is responsible for the creation of a reporting company through the filing of formation documents, and the individual that directly submits the formation documents, if that function is performed by a different person, but it reduces potential burdens by limiting the definition of company applicant to only one or two individuals.

In many cases, company applicants may be employed by a business formation service or law firm. For example, there may be an attorney primarily responsible for overseeing the preparation and filing of incorporation documents and a paralegal who directly files them with a state office to create the reporting company. In this example, this reporting company would report two company applicants—the attorney and the paralegal—but additional individuals who may be indirectly involved in the filing would not need to be reported.

In other cases, a person who controls a reporting company may create the reporting company and file its formation documents without the assistance of a business formation service, law firm, or similar service. For example, an individual may prepare and self-file documents to create the individual's own reporting company. In this case, this reporting company would report one company applicant—the individual—who would also be reported as a beneficial owner. In another example, without the assistance of a business formation service, an individual may prepare formation documents for the individual's own reporting company, and a family member, agent, or other individual may directly file the documents with the state office. In this example, this reporting company would report two company applicants—the individual who prepares the documents and the individual who directly files them. State filing office employees who process formation documents in the ordinary course of their state employment are not the filers of the documents they process, and therefore do not need to be reported. Where business formation services provide software, online tools, or generally applicable written guidance, the employees of such services are not company applicants. However, employees of such services may be company applicants if they are personally involved in the filing of a document to form a particular company.

E. Reporting Company

Consistent with the CTA, proposed 31 CFR 1010.380(c)(1) defined two terms, ''domestic reporting company'' and ''foreign reporting company,'' which are the companies subject to the CTA's reporting requirements.[183] Commenters had a broad range of questions about whether particular types of entities fall within the scope of these definitions. In view of the number of fact-specific questions and the varying state practices on corporate formation and registration, FinCEN recognizes that further guidance and FAQs may be needed to provide guidance in specific factual circumstances. Proposed 31 CFR 1010.380(c)(2) specified several exemptions from the definitions.

[183] 31 U.S.C. 5336(a)(11)(A)(i)–(ii).

i. Domestic Reporting Company

Proposed Rule. Proposed 31 CFR 1010.380(c)(1)(i) defined a domestic reporting company to include: a corporation; a limited liability company; 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.[184] 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 proposed 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.

Comments Received. While comments were generally supportive of the definition reflected in the proposed rule, at least one commenter stated that the definition of reporting company should align with the legal entity customer definition in the 2016 CDD Rule. This commenter noted that if the definition does not conform with the 2016 CDD Rule's definition, depository institutions would not be able use and rely on the BOSS to fulfill their CDD Rule obligations. A number of comments noted that the proposed rule effectuated the broad scope of the CTA and defined ''other similar entity'' by reference to whether it was created under the laws of the state or Indian tribe, or registered to do business in the state or Tribal jurisdiction, by filing a document with a secretary of state or similar office.

Commenters, however, sought a range of clarifications to the proposed definition of domestic reporting company. Commenters asked whether particular types of legal entities were included or excluded within the proposed definition. Some commenters asked for an enumeration of the types of legal entities included within the scope of ''other similar entity.'' One commenter, for example, requested that the list of entities qualifying as a domestic reporting company include limited partnerships, limited liability partnerships, limited liability limited partnerships, and statutory trusts. Four commenters also asked whether insurance company separate accounts, certain special purpose vehicles, series LLCs, single-member LLCs, or entities that voluntarily file with secretaries of state or similar offices would or would not be reporting companies. Multiple comments requested additional clarification about how to apply the proposed rule to different kinds of trusts, including business trusts, common law trusts, irrevocable trusts, and statutorily mandated trust entities. Numerous comments, including some comments from secretaries of state, supported expressly excluding sole proprietorships and general partnerships. These commenters opined that not doing so might cause confusion: in most jurisdictions, general partnerships and sole proprietorships do not generally have to file anything with a secretary of state or other similar office, but many do elect to file certain forms in certain cases, such as d/b/a certificates, with a state or local government office. Other commenters asked about various situations in which a filing might create a reporting company, *e.g.,* through a voluntary filing, through conversions or reorganizations, or in the context of a delayed effective date. One commenter noted that the way to determine whether an entity is a reporting company is to focus on the act of filing to create the entity as the determinative factor. Another commenter agreed that this process-oriented definition of reporting company provides flexibility that accounts for the filing practice unique to each state.

Commenters also requested clarification of the term ''similar office.'' One commenter suggested, for example, that ''similar office'' should be construed to include any state or local government authority, including a state, local, regional, or Tribal court, in order to bring certain trusts that voluntarily register with such authorities under certain states' laws into the definition of reporting company and subject them to the rule's reporting requirements.

Lastly, some commenters expressed concern that reliance on state law requirements could provide opportunities for evasion and avoidance given differences between state law requirements. One commenter also suggested that the term ''created'' be interpreted to focus on the activities that the entity could perform, *e.g.,* the ability to conduct business, in order the prevent states from being able to re-label the formation or registration activity for purposes of evasion.

Final Rule. The final rule adopts proposed 31 CFR 1010.380(c)(1)(i) without significant change. The final rule incorporates the CTA's definition of domestic reporting company, which broadly captures corporations, LLCs, and other similar entities created by a filing with a secretary of state or similar office. Notably, despite requests that FinCEN align the reporting company definition with the 2016 CDD Rule, the final rule does not make that change because the CTA's definition of reporting company is distinct from the definition in the 2016 CDD Rule.

FinCEN considered whether to further define ''other similar entity'' as used in 31 U.S.C. 5336(a)(11)(A) or to list the types of entities that are either subject to the rule or not subject to the rule. The numerous comments in response to questions on this issue in the NPRM made clear that state law corporate formation practices and nomenclature vary among states and with respect to particular types of entities. Many secretaries of state, for example, provided some clarification regarding situations in which certain types of entities are required to file a formation document and other types of entities generally are permitted to submit certification or other documents, but the details of these situations varied. This variety makes it difficult to identify types of entities that are or are not categorically covered by the definition in every state or scenario.

The CTA itself provides a reasonably clear principle to apply to the variety of specific scenarios, *i.e.,* that a domestic reporting company is an entity created by the filing of a document with a secretary of state or other similar office. In general, FinCEN believes that sole proprietorships, certain types of trusts, and general partnerships in many, if not most, circumstances are not created through the filing of a document with a secretary of state or similar office. In such cases, the sole proprietorship, trust, or general partnership would not be a reporting company under the final rule. Moreover, where such an entity registers for a business license or similar permit, FinCEN believes that such registration would not generally ''create'' the entity, and thus the entity would not be created by a filing with a secretary of state or similar office. However, the particular context and details of a state's registration and filing practices may be relevant to determining whether an entity is created by a filing, and based on the range of responses regarding state law corporate formation practices, there may be varying practices that make a categorical rule that includes or exclude specific types of entities impracticable. It is similarly difficult to craft a generally applicable rule for conversions or reorganizations of entities, given the range of possible scenarios for conversions or reorganizations under state law and the variety of outcomes in terms of an entity retaining certain attributes of its predecessor entity. In such cases, the touchstone is whether the successor entity is created by the

[184] *Id.*

filing of a document with a secretary of state or similar office. Given the potential range of relevant facts, FinCEN will consider issuing guidance as necessary to resolve questions on whether entities of particular types in particular circumstances are created by the filing of a document with the relevant authority.

One commenter suggested that sole proprietorships that file a document with a state or Tribal agency to obtain a d/b/a or other trade name should be considered to be reporting companies and subject to the rule's reporting requirements. FinCEN does not address this issue in the final rule, but notes that the core consideration for the purposes of the CTA's statutory text and the final rule is whether an ''entity'' is ''created'' by the filing of the document with the relevant authority. In light of the potential for varying state law practices, FinCEN may consider guidance in the future to address considerations relevant to entities that register to use a d/b/a or other trade name.

Some of the comments raise the issue of the difference between ''mandatory'' and ''voluntary'' filings, asserting that FinCEN should make no distinction between the two. We emphasize again that the only relevant issue for the purposes of the CTA and the final rule is whether the filing ''creates'' the entity. Whether the ''filing'' is deemed mandatory or voluntary, whether such a filing is pursuant to a conversion or reorganization, whether it is made for tax, dissolution, or other purposes, or any other such consideration, is not necessarily dispositive. FinCEN is prepared to issue guidance if necessary to further clarify which situations may cause a newly formed entity to be subject to the reporting company definition.

Some commenters identified states in which a department or agency other than the secretary of state handled business entity filings. These commenters asked for greater clarity regarding the term ''similar office.'' FinCEN notes that some states call the state agency that has primary responsibility for handling filings that create legal entities under state law something other than a ''secretary of state.'' [185] FinCEN also notes a similar office may include a department or agency that has functions similar to a secretary of state to the extent they receive filings that create new entities. But a determination as to whether an office is ''similar'' depends on context. One commenter noted that in some states entities such as trusts file relevant documents with state courts for certain purposes and asked that FinCEN expressly include state courts within the meaning of the term ''similar office.'' As with types of entities, FinCEN declines to incorporate into the final rule either a one-size-fits-all definition or a list of qualifying offices that create entities by filing with the state office, given the varying state practices. FinCEN, however, will consider additional guidance as appropriate.

Lastly, FinCEN considered whether reliance on state law corporate formation practices for the purposes of the definition of a reporting company would create opportunities for avoidance or evasion of the reporting requirements. At least one commenter stated that the word ''created'' should be interpreted by reference to a type of activity, *e.g.,* the ability to conduct business, in order to avoid the potential for evasion based on differing state law corporate formation practices. FinCEN does not adopt this suggestion because the standard specified by the CTA is whether an entity is created by a filing, and that standard should not be confused with other types of filings for other purposes or to satisfy other state requirements. While potential differences in state law practices could provide opportunities for forum shopping, FinCEN does not make any changes in response to this comment. The CTA is clear that state corporate formation law and practices dictate whether an entity is a reporting company.

ii. Foreign Reporting Company

Proposed Rule. 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. As explained in the proposed rule, FinCEN would 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 rule otherwise tracked 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.

Comments Received. As with the definition of domestic reporting company, comments were generally supportive of the definition reflected in the proposed rule but sought additional specificity about scope of the definition. Some commenters proposed clarifications to the foreign reporting company definition and noted that entities may not be required to file with a secretary of state or similar office depending on their activities within the state. For example, one secretary of state explained that state law regarding corporations and LLCs specifies that certain activities of a foreign entity in that state do not constitute transacting business there, and thus do not trigger a filing requirement with the state. Multiple commenters expressed the concern that the requirement that a foreign entity that registers to do business in a state or Tribal jurisdiction by the ''filing of a document'' with the relevant state or Tribal authority will require small businesses to employ tax or legal professionals to advise them on how to comply with the proposed regulation. Additionally, some state authorities highlighted potential confusion surrounding the term ''foreign,'' given the common state practice of referring to all entities organized outside of the state—including those organized in other states within the United States—as ''foreign'' entities; these state authorities suggested the reporting rule use the term ''international foreign.'' Some commenters noted that the proposed definition is underinclusive and will not achieve an appropriate level of transparency. Lastly, some commenters asked FinCEN to require State and Tribal agencies to inform FinCEN of laws and regulations that allow a non-U.S. entity to conduct activities within the United States in order to enhance transparency.

Final Rule. The final rule adopts the proposed 31 CFR 1010.380(c)(1)(ii) without change. As with the definition of domestic reporting company, the final rule incorporates the CTA's definition of foreign reporting company, which broadly captures corporations, limited liability companies, and other entities formed in a foreign country when they are registered to do business in the United States by the filling of a document with the secretary of state or similar office.

The final rule does not make any changes in response to requests from commenters to clarify the meaning of ''foreign'' based on state law convention. By referring to an entity ''formed under the law of a foreign country,'' 31 CFR 1010.380(c)(1)(ii)(B) makes clear that the *country* of origin is relevant for the purposes of the definition of a foreign reporting

[185] In the District of Columbia, for example, the office with that function is the Department of Consumer and Regulatory Affairs; in Virginia, it is the State Corporation Commission.

company, rather than state law convention.

The final rule does not impose a requirement on state and Tribal agencies to inform FinCEN of laws and regulations that allow a non-U.S. entity to conduct activities within the United States. The CTA does not provide for general information collection from states or Indian tribes regarding the laws or other rules governing the ability of foreign entities to do business in a state or Tribal jurisdiction.

Lastly, with respect to cost burdens, FinCEN recognizes the direction in the CTA to create a highly useful database while taking into account the costs to small businesses in a manner consistent with the statute. The regulatory impact analysis in Section V. below clarifies cost estimates based on comments received with respect to the proposed rule.

iii. Exemptions

The CTA exempts from the definition of ''reporting company'' twenty-three specific types of entities.[186] Many of these exempt entities are already subject to substantial federal and/or state regulation or already have to provide their beneficial ownership information to a governmental authority. The statute also authorizes the Secretary to exempt, by regulation, additional types of entities for which collecting BOI would neither serve the public interest nor be highly useful in national security, intelligence, and law enforcement agency efforts.[187]

a. General Matters

Proposed Rule. Proposed 31 CFR 1010.380(c)(2) clarified ambiguous phrases in statutory exemptions to the definition of reporting company, notably in the exemptions for public utilities, large operating companies, subsidiaries of certain other types of exempt entities, and dormant entities. The proposed rule also made minor alterations to paragraph structure to enhance clarity and added short titles.

Comments Received. Comments concerning exemptions as a general subject[188] typically fell into two groups: those that wanted exemptions to be construed narrowly and thought new exemptions should not be created, and those that wanted existing exemptions to be broadened and/or thought more exemptions should be created. These comments also discussed filing requirements in connection with exemptions, the overall clarity of the exemptions, and the alignment of exemptions in the CTA and those in the 2016 CDD Rule.[189]

Numerous comments discussed filing obligations for exempt entities. Some commenters asserted that entities should have to file a form in order to claim an exemption. Others suggested that exempt entities should be permitted to file their BOI, even if FinCEN did not have the authority to require them to. One commenter, for example, suggested that exempt entities be permitted to file exemption certificates voluntarily with FinCEN. This could give a financial institution accessing the BOSS for CDD purposes documentation to rely upon if the institution were concerned that the entity's BOI was not in the BOSS. Another commenter suggested entities be required to seek exemption certificates in order to help identify entities unlawfully claiming to be exempt.

Another commenter asked whether the regulation would preclude an exempt entity from filing a ''protective'' report, *i.e.,* an initial BOI report that an entity would file despite believing that it qualified for an exemption in order to avoid being penalized if it unwittingly lost its exemption later. Another commenter requested that the rule address situations in which a reporting entity becomes exempt after filing an initial BOI report, or when an exempt entity ceases to be exempt. Relatedly, one commenter asked that the rule expressly state that exempt entities have no BOI reporting obligations unless or until they cease to fall within one of the exemptions.

Concerning clarity, multiple state authorities indicated that they found the exemptions to be unclear; several urged FinCEN to develop and implement an online tool or ''wizard'' to help entities determine whether any specific exemptions would apply to their specific circumstances.

Final Rule. After considering all comments, FinCEN is adopting 31 CFR 1010.380(c)(2) largely as proposed, making small changes to improve clarity and without adding any additional exemptions, as explained in the next subsection.

FinCEN considers the rule to be clear with respect to when an entity's reporting obligation begins or ends relative to when it becomes or ceases to be exempt. Under 31 CFR 1010.380(a)(1), any entity that meets the definition of a ''reporting company'' must file a report of beneficial ownership with FinCEN. This applies to entities that have never been exempt and to those that were exempt but no longer are. Entities that are no longer exempt are subject to the special rule of 31 CFR 1010.380(a)(1)(iv), which requires them to file a report within 30 calendar days of ceasing to be exempt. FinCEN does not believe at this time that additional regulatory changes are needed to clarify these obligations. Nevertheless, FinCEN will monitor the application of each exemption and will assess the need for further guidance or FAQs accordingly. FinCEN will also consider issuing guidance to help the public understand and comply with CTA obligations.

FinCEN acknowledges the comments urging that exempt entities be permitted or required to obtain exemption certificates. However, these comments did not identify a basis in the CTA for imposing that obligation on exempt entities, and FinCEN does not believe that a voluntary process is needed for such filings at this time, though FinCEN will continue to consider it.

Finally, as a general matter, FinCEN believes it is appropriate to interpret ambiguities in those exemptions reasonably narrowly. The CTA's definition of ''reporting company'' is broad, the exemptions for twenty-three specific categories of entities are carefully circumscribed, and the expansion of these exempt categories

[186] *See* 31 U.S.C. 5336(a)(11)(B)(i)–(xxiii), exempting from beneficial ownership information reporting requirements 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 entities registered pursuant to the Securities Exchange Act of 1934 entities, registered investment companies and advisers, venture capital fund advisers, insurance companies, state licensed insurance producers, entities registered pursuant to the Commodity Exchange Act, 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.

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

[188] Comments concerning specific exemptions are discussed in more detail in the relevant subsections below.

[189] One commenter noted that the list of exempt entities set out in the CTA did not align with those entities covered by the 2016 CDD Rule, in particular by exempting charities and nonprofits, certain types of regulated non-bank financial institutions such as money services businesses (MSBs), and large operating companies. The comment observed that this would raise the issue of whether to conform the exemptions in the 2016 CDD Rule to those of the BOI reporting rule when FinCEN revised the 2016 CDD Rule as required by the CTA. The comment suggested that removing large operating companies would not be particularly problematic, but that other types of entities, such as charities, nonprofits and MSBs, would probably have to remain subject to the 2016 CDD Rule, even if not to the proposed BOI reporting rule. The comment stated that these discrepancies would potentially reduce the usefulness of the BOSS to financial institutions and law enforcement. FinCEN will address any larger issues that may arise from a disconnect between the 2016 CDD Rule and the final BOI reporting rule in the revisions to the 2016 CDD Rule, which FinCEN is required to finalize no later than one year after the effective date of the BOI reporting rule.

requires consultation and specific findings that BOI reporting would not be highly useful and serve the public interest. Those features of the CTA are consistent with its overall objective of enhancing financial transparency and making it more difficult for bad actors to conceal their illicit financial activities.[190] Broad exemptions risk undercutting those efforts by creating loopholes that can be used to evade the CTA's reporting requirements. Congress's concern regarding potential abuse of the exemptions is also apparent in its decision to require the Secretary to continuously review whether exemptions are being used by illicit actors.[191] As 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 CTA, noted in his December 9, 2020, floor statement accompanying the CTA, the twenty-three exemptions are ''intended to be narrowly interpreted to prevent their use by entities that otherwise fail to disclose their beneficial owners to the federal government.'' [192]

b. Additional Exemptions

Proposed Rule. As discussed in Section III.E.iii, the CTA authorizes the Secretary to exempt additional entities or classes of entities from the definition of ''reporting company.'' [193] Before doing so, the Secretary must determine—by regulation and with the written concurrence of the Attorney General and the Secretary of Homeland Security—that requiring these entities to report their BOI 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.[194] In the NPRM, FinCEN did not propose any additional exemptions beyond the twenty-three specified in the CTA.

Comments Received. Numerous commenters discussed whether or how FinCEN should use its statutory authority to add more exemptions to the definition of ''reporting company.'' Commenters offered a wide range of positions, the most common of which either expressed strong support for FinCEN's decision in the proposed rule not to include additional exemptions, or supported additional exemptions based upon existing regulatory requirements or commercial practices. A number of commenters asked that FinCEN exempt qualifying family offices, noting that such offices and their beneficial ownership are already known to federally regulated financial institutions and financial regulators, and are routinely reviewed and audited by the IRS and state tax authorities. A few commenters also urged FinCEN to exempt commodity pools that are operated by CFTC-registered commodity pool operators (CPOs) or advised by CFTC-registered commodity trading advisors (CTAs). These commenters noted that the CTA already exempts the CPOs and commodity trading advisors themselves. In addition, multiple commenters expressed support for exempting highly regulated entities that provide professional services, such as law firms and certain accounting firms, because they already provide beneficial ownership information to regulatory authorities. One commenter proposed that all money services businesses registered with a state should be exempted, whether or not registered with FinCEN, apparently on a similar theory.[195] Commenters also suggested FinCEN consider exempting entities that already report BOI to the IRS or foreign authorities. For example, one commenter proposed that FinCEN exempt entities registered in jurisdictions where beneficial ownership information is public, semi-public, or otherwise accessible by the United States government. Other commenters proposed still other exemptions which are discussed throughout the rest of this section.

Final Rule. The final rule does not include any exemptions beyond the twenty-three specifically set out in the CTA. As discussed in the previous section, the CTA reflects Congress's concern that exemptions could create loopholes that illicit actors could exploit to evade reporting requirements. The CTA therefore sets a high bar for creating additional exemptions: the Secretary, the Attorney General, and the Secretary of Homeland Security must all agree that requiring BOI from such entities would neither serve the public interest nor help further key government objectives. While FinCEN has considered comments proposing additional exemptions, commenters generally did not provide enough information to support making those determinations at this time.

FinCEN will continue to consider potential exemptions, including the extent to which certain entities may already report their beneficial owners to the federal government through means other than the CTA, such that those entities could potentially be exempt from the BOI reporting requirement. In addition, FinCEN will continue to consider suggestions for additional exemptions and consider regulatory and other implications associated with a given discretionary exemption.

c. Depository Institution Holding Companies

Proposed Rule. The NPRM proposed to adopt the CTA exemption for a bank holding company verbatim in 31 CFR 1010.380(c)(2)(v), and added a short title to the exemption ''Depository institution holding company'' for clarity and ease of reference.

Comments Received. FinCEN received several comments urging that this exemption be expanded to take into account various other categories of holding companies, including holding companies of other types of financial institutions or of exempt entities. One of these comments urged FinCEN to consider exempting all corporate owners and affiliates of exempt companies where corporate ownership information is already disclosed to state or federal regulators (*e.g.,* insurance holding companies that must disclose the identity of their controlling shareholders to state insurance regulators).

Final Rule. After considering all comments, including suggestions for additional exemptions, FinCEN is adopting 31 CFR 1010.380(c)(2)(v) largely as proposed. Expanding this exemption to cover additional types of holding companies would require an additional exemption beyond the twenty-three specific ones provided for in the CTA.[196] As explained in Section

[190] *See generally* CTA, Section 6402.

[191] *See* 31 U.S.C. 5336(i).

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

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

[194] *See id.*

[195] As explained in greater detail in Section III.E.iii.b., FinCEN is not implementing any additional exemptions at this time. This comment, however, has prompted FinCEN to clarify the exemption that FinCEN had labeled the ''money transmitting business'' exemption. The commenter correctly read the statutory language, which the proposed rule had tracked verbatim, as exempting any ''money transmitting business registered . . . under [31 U.S.C.] 5330'' to apply to any money services businesses registered under 31 CFR 1022.380, the FinCEN regulation that implements the registration requirement of 31 U.S.C. 5330. However, the proposed language may require a level of familiarity with the BSA and FinCEN regulations that reporting companies may not necessarily have. To reduce the risk of confusion, FinCEN has renamed the exemption the ''money services business'' exemption and has inserted additional language making clear that the exemption applies to all money services businesses registered under 31 CFR 1022.380.

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

III.E.iii.b, FinCEN does not believe that creating such an exemption would be appropriate at this time. Critically, commenters did not provide enough information about what additional types of holding companies should be exempt or why exempting them would satisfy the factors the CTA requires FinCEN to consider. However, FinCEN will continue to consider suggestions for additional exemptions, including those proposed by these commenters.

d. Insurance Companies

Proposed Rule. Proposed 31 CFR 1010.380(c)(1)(xii) adopted verbatim the statutory language describing an exemption from the definition of ''reporting company'' for insurance companies.

Comments Received. FinCEN received two comments on this exemption. One supported the retention of the statutory language. The other criticized that language for potentially applying to captive insurance companies, which would enable those entities to avoid reporting their beneficial owners.

Final Rule. The final rule adopts the language of the proposed rule without change. The commenter that disapproved of the fact that the insurance company exemption might apply to captive insurance companies was critical of captive insurance arrangements and argued that such companies are ''high-risk entities.'' The commenter pointed to enforcement actions taken by the IRS against certain ''abusive micro-captive'' insurance arrangements. While FinCEN acknowledges these concerns, the scope of this exemption was specified by Congress in the CTA.

FinCEN does not opine here on whether or to what extent certain captive insurance companies, which can vary significantly in structure and size, might be able to properly claim this exemption. FinCEN may further consider captive insurance companies in connection with the study of exempt entities required under CTA section 6502(c).

e. Insurance Producers

Proposed Rule. Proposed 31 CFR 1010.380(c)(1)(xiii) adopted verbatim the statutory language describing an exemption from the definition of ''reporting company'' for state-licensed insurance producers. Consistent with the CTA, this exemption applies to an entity that ''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 ''has an operating presence at a physical office within the United States.'' [197] The CTA did not provide a definition of the latter ''operating presence'' phrase, but proposed 31 CFR 1010.380(f)(6) defined this term 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.''

Comments Received. FinCEN received one comment on the insurance-producer exemption, which accepted the exemption's basic framework but argued that FinCEN was adopting an unreasonably strict definition of the exemption's ''operating presence'' phrase in a way that would unduly burden certain producers that maintain a working office and residence at the same location. As noted, the CTA specifically limits this exemption to state-licensed insurance producers that have ''an operating presence at a physical office within the United States.'' [198] Because the CTA did not define this term, FinCEN interpreted it in an effort to make clear the circumstances under which this exemption applied (as well as the exemption for large operating companies, which also includes this phrase as one of its elements). FinCEN's proposed definition of the term ''has an operating presence at a physical office within the United States,'' among other things, limited physical offices to those that are ''not the place of residence of any individual.'' The commenter argued that this exclusion of home offices would operate to deny the exemption to a number of insurance producers who would otherwise qualify. The commenter went on to argue that, particularly at a time when the COVID–19 pandemic had shown the feasibility and potential of working from home, this disqualification would unfairly burden these entities.

Final Rule. FinCEN adopts the insurance-producer exemption as proposed, but modifies the definition of the term ''has an operating presence at a physical office within the United States'' to eliminate the limitation of physical offices to those that are ''not the place of residence of any individual.'' FinCEN is persuaded by the commenter's argument that this limitation did not advance the policy underlying this exemption and risked unduly burdening certain insurance producers.

[197] 31 U.S.C. 5336(a)(11)(B)(xiii)(I)–(II).

[198] 31 U.S.C. 5336(a)(11)(B)(xiii)(II).

f. Tax-Exempt Entities

Proposed Rule. Proposed 31 CFR 1010.380(c)(2)(xix) adopted verbatim the CTA's language defining an exemption from the definition of ''reporting company'' for tax-exempt entities, apart from adding an explanatory label for the exemption and changing the introductory ''any'' to ''[a]ny entity that is.''

Comments Received. FinCEN received comments both supportive and critical of the proposed rule. Supportive commenters stressed that a broader reading could create loopholes that illicit actors could exploit. Critical commenters argued that the exemption should be read more broadly to cover ancillary circumstances. For example, some commenters asserted that the exemption should cover entities that had applied to the IRS for tax-exempt status but were still awaiting a determination. Others argued that it should cover all nonprofits, even those that did not qualify for tax-exempt status under section 501(c) of the Internal Revenue Code. Still others argued that, for entities that lose their tax-exempt status, the exemption should continue to apply beyond the 180 days that the CTA allows. These commenters generally argued that this is needed to avoid hardship, such as when an entity's tax-exempt status was retroactively revoked more than 180 days earlier, or to cover nonprofits that do not plan to seek federal tax-exempt status.

Final Rule. The final rule adopts the proposed exemption for tax-exempt entities as proposed. FinCEN believes the proposed rule, which is almost identical to the statutory language, sufficiently identifies the tax-exempt entities that are covered by the exemption. Additionally, FinCEN declines to adopt any additional exemptions at this time. The commenters seeking to expand this statutory exemption have not provided enough information to permit FinCEN to determine that BOI reporting would not be in the public interest or would not further key government efforts to protect national security and combat illicit activity. However, as discussed in Section III.E.iii.b, FinCEN will continue to consider suggestions for additional exemptions, including those proposed by these commenters.

In addition, FinCEN recognizes the concerns raised about potential exploitation of this exemption as well as the following exemption for entities assisting tax-exempt entities. As one commenter highlighted, Senator Sherrod Brown stated on the Senate

floor shortly before passage: ''The exemption provided to certain charitable and nonprofit entities also merits narrow construction and careful review in light of past evidence of wrongdoers misusing charities, trusts, foundations, and other nonprofit entities to launder funds and advance criminal and civil misconduct.'' [199] Treasury has also noted instances where criminals and terrorist groups have abused charitable organizations.[200] FinCEN will monitor the application of these exemptions and assess the need for further guidance, notices, or FAQs accordingly.

g. Entity Assisting a Tax-Exempt Entity

Proposed Rule. Besides inserting a short title and incorporating several technical clarifications, 31 CFR 1010.380(c)(2)(xx) of the proposed rule tracks the relevant provision of the CTA.[201] The proposed rule specified that an entity assisting a tax-exempt entity, was one that (i) operates exclusively to provide financial assistance to, or hold governance rights over, a tax-exempt entity, (ii) is a U.S. person, (iii) is beneficially owned or controlled exclusively by one or more U.S. persons that are U.S. citizens or lawfully admitted for permanent residence, and (iv) 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.

Comments Received. One commenter recommended that the final rule change the title of this exemption to ''Entity exclusively providing financial assistance to or holding governance rights over a tax exempt entity,'' consistent with the statute and the defining language that immediately follows. The commenter noted that the exemption was unusual, unprecedented in the United States, and does not exist in any other beneficial ownership registry worldwide. The commenter argued, therefore, that the exemption requires a precise title description so that entities that do not qualify for it are not encouraged by the title to claim the exemption and attempt to broaden it.

Final Rule. FinCEN is adopting the text in 31 CFR 1010.380(c)(2)(xx) of the proposed rule, including the short title of the sub-section as proposed, ''Entity assisting a tax-exempt entity.'' FinCEN believes this short title succinctly describes the topic for ease of reference and encapsulates the provision of financial assistance to, or the holding of governance rights over tax-exempt entities described in 31 CFR 1010.380(c)(2)(xix). Additionally, FinCEN does not share the commenter's concern regarding the risk that entities may misunderstand or impermissibly broaden the exemption based solely upon the short title. The technical requirements of the exemption are clearly specified and the short title of the sub-section does not alter the operative regulatory language.[202]

h. Large Operating Companies

Proposed Rule. Proposed 31 CFR 1010.380(c)(2)(xxi) clarified an exemption relating to what the proposed regulations have termed ''large operating companies.'' Under the CTA, 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.'' [203]

The proposed rule offered clarifications to each of these three statutory elements. First, concerning who counts as a full-time employee, the proposed rule borrowed familiar IRS concepts widely used by employers in order to promote regulatory consistency and to make determining whether an entity passed the threshold of 20 full-time employees straightforward.[204] Second, concerning what counts as gross receipts or sales, the proposed rule focused on U.S. sources and also explained, again using well-known concepts in U.S. tax practice, how entities could use income reported on consolidated filings to determine whether the exemption applied.[205] And third, the proposed rule defined the phrase ''has an 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.'' [206]

Comments Received. Some commenters expressed concern as a general matter that the large operating company exemption will require ongoing monitoring, as it could be particularly susceptible to abuse.[207] Commenters also advocated for legislative changes to narrow the exemption, given their concerns that the exemption could too easily allow bad actors to avoid reporting beneficial ownership information.

Commenters also focused variously on the three factors in the large operating company exemption. Comments were particularly numerous and wide-ranging on the employee factor. Some commenters stated their support for the approach taken by the proposed rule, while other commenters asked FinCEN to either broaden or narrow its scope based on considerations involving the database's usefulness and potential burdens. Other commenters suggested that the employee count should be evaluated on a consolidated basis, rather than on an entity-by-entity basis, to the extent the entity is part of a consolidated group. These commenters noted that such an approach would conform the employee count with the approach taken in the gross receipts factor.

A few commenters focused on the gross receipts or sales factor. Some commenters supported the regulatory interpretation of limiting the exemption criteria to gross receipts or sales in the United States, while others stated that this factor should not be limited to U.S. activities.

Other commenters also addressed the physical presence factor. These commenters stated that the restrictiveness of the physical presence factor fails to reflect current business realities, and that the regulation should

[199] 166 Cong. Rec. S7311 (daily ed. Dec. 9, 2020) (statement of Senator Sherrod Brown).

[200] *See* Treasury, *National Money Laundering Risk Assessment,* (Feb. 2022), pp. 24, 38, available at *https://home.treasury.gov/system/files/136/2022-National-Money-Laundering-Risk-Assessment.pdf; See* Treasury, ''National Terrorist Financing Risk Assessment,'' (Feb. 2022), pp. 23–35, available at *https://home.treasury.gov/system/files/136/2022-National-Terrorist-Financing-Risk-Assessment.pdf.*

[201] 31 U.S.C. 5336(a)(11)(B)(xx).

[202] *See e.g., Bhd. of R.R. Trainmen* v. *Balt. & Ohio R.R. Co.,* 331 U.S. 519, 528 (1947).

[203] 31 U.S.C. 5336(a)(11)(B)(xxi).

[204] Proposed 31 CFR 1010.380(c)(2)(xxi)(A).

[205] Proposed 31 CFR 1010.380(c)(2)(xxi)(C).

[206] Proposed 31 CFR 1010.380(c)(2)(xxi)(B), (f)(6).

[207] By ''abuse,'' these comments appear to mean that companies can easily manipulate aspects of their business to satisfy all three conditions, leading to more entities claiming the exemption than Congress may have intended or than is appropriate. FinCEN is not aware of any estimates that Congress or others made of the number of entities that this exemption was intended to cover, so it is difficult to evaluate how broad of an exemption is appropriate, other than by the qualitative method of comparing the regulatory text to the statutory text. So long as the regulatory text does not significantly change the reach of the exemption as set forth in the CTA, and so long as the tests laid out in regulation are not significantly easier or harder to satisfy than those laid out in the statute, FinCEN will consider that the exemption is operating as Congress intended.

reflect the widespread use of shared workspaces and home offices.

More broadly, several commenters noted that the exemption's criteria of 20 full-time employees and $5 million in gross receipts are difficult to prove or maintain over an indefinite period of time. Commenters suggested that the number of employees should be tied to a reference period, such as an average over the last year, or the year preceding a specific date, such as the date of an entity's federal income tax filing. Lastly, commenters raised a number of technical suggestions—for example, to clarify how entities should account for circumstances such as when a company undergoes a merger or acquisition.

Final Rule. The final rule adopts the proposed 31 CFR 1010.380(c)(2)(xxi) without change. The full-time employee factor expresses well-known and well-established general business tax principles and should not require further elaboration. FinCEN declines to permit companies to consolidate employee headcount across affiliated entities. Although the CTA specifies that gross receipts or sales are to be consolidated, the CTA contains no similar specification for employee headcount.[208] To the contrary, it provides that the exception applies to an ''*entity* that . . . employs'' more than 20 employees, indicating that the determination of the number of employees is to be made on an entity-by-entity basis.[209] In terms of assessing whether an entity has the requisite number of employees to qualify for the exemption, FinCEN expects that companies will regularly evaluate whether they qualify (or no longer qualify) for the exemption. FinCEN believes that such evaluations should be as simple as possible, and as consistent as possible from reporting company to reporting company, and for these reasons FinCEN rejects the suggestion of certain commenters that the employee number be calculated as an average of several numbers over a period of time. FinCEN will consider additional guidance or FAQs in order to clarify specific factual circumstances that arise in the course of evaluating the applicability of this exemption.

For similar reasons, FinCEN does not believe changes to the language of the gross receipts or sales factors are appropriate. In particular, FinCEN declines the suggestion by some commenters to expand the consideration of revenue to include non-U.S. sources. The text of this exemption focuses on activity occurring in the United States and revenue reported on U.S. income tax returns, and the attribution of revenue to a national source is well understood by businesses, particularly the larger businesses to which this exemption will apply. Similarly, FinCEN assesses that businesses covered by this exemption understand that events such as mergers and acquisitions can affect revenue calculations and payroll decisions. Therefore, FinCEN believes determining whether this exemption applies should be straightforward even in years when such events take place.

Because of the change to the definition of the term ''has an operating presence at a physical office within the United States,'' discussed in greater detail in connection with the insurance producer exemption in Section III.E.iii.e, the large operating company exemption may apply more broadly than it would have been under the proposed rule. However, the only additional entities that will now qualify for this exemption under the final rule are large operating companies whose physical presence in the United States consists exclusively of properties used as someone's residence. FinCEN assesses that entities of this type are likely to be few. Most companies of the size necessary to take advantage of this exemption are likely to have some operating presence in non-residential premises and would therefore have been able to take advantage of the exemption under the formulation of the proposed rule, as they will under the final rule. FinCEN therefore believes that the overall effect of this change will be insignificant for this exemption.

Finally, because these factors are established by statute, FinCEN lacks the authority to address concerns regarding their unfairness or inherent risk. Nevertheless, FinCEN takes seriously the need to ensure that no exemption is misused and will monitor the application of this exemption, remain vigilant against potential abuses, and evaluate the need for further guidance or FAQs.

i. Subsidiaries

Proposed Rule. Proposed 31 CFR 1010.380(c)(2)(xxii) clarified the CTA's exemption for entities in which ''the ownership interests are owned or controlled, directly or indirectly, by one or more'' of certain exempt entities identified in the statute.[210] FinCEN called this the ''subsidiary exemption'' and interpreted 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.

Comments Received. Commenters expressed concern about the scope of this exemption. Many commenters urged FinCEN to clarify that the exemption would apply only to ''*wholly* controlled or wholly owned'' subsidiaries (versus the proposed rule that reads ''controlled or wholly owned'') in order to make the exception as narrow as possible and avoid creating a loophole to evade reporting requirements. By contrast, several commenters suggested that the exemption should be widened to subsidiaries that are ''majority owned.'' In addition, one commenter recommended that this exemption be expanded to include holding companies owning only CTA-exempt entities.

Final Rule. FinCEN is adopting 31 CFR 1010.380(c)(2)(xxii) as proposed, with a minor grammatical edit. While hewing to the statutory language, the interpretation 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. FinCEN does not need to add ''wholly'' before ''controlled'' because FinCEN assesses that the latter covers the intended concept of control set out in the CTA.[211] FinCEN also determined that extending the exemption to majority-owned subsidiaries would include entities unintended by the language of the CTA. With respect to the recommendation to broadly interpret the subsidiary exemption to include holding companies owning only CTA-exempt entities, the CTA provision does not provide for such an expansion and the subsidiary exemption focuses on subsidiaries, not parents, of exempt entities. In addition, for the reasons discussed in ''Section III.E.iii.b—Additional Exemptions'' and ''Section III.E.iii.c—Depository Institution Holding Companies'' above, FinCEN is not implementing additional exemptions beyond the twenty-three specific statutory ones at this time, including to cover non-depository institution holding companies. However, FinCEN will continue to consider suggestions for additional exemptions, including those proposed by commenters concerning this exemption.

j. Pooled Investment Vehicles

Proposed Rule. Proposed 31 CFR 1010.380(c)(2)(xviii) implemented the

[208] *See* 31 U.S.C. 5336(a)(11)(B)(xxi)(II).

[209] 31 U.S.C. 5336(a)(11)(B)(xxi)(I) (emphasis added).

[210] 31 U.S.C. 5336(a)(11)(B)(xxii).

[211] *Id.*

exemption for pooled investment vehicles, and proposed 31 CFR 1010.380(f)(7) defined the term ''pooled investment vehicle.'' Both provisions used the applicable CTA language [212] verbatim. Proposed 31 CFR 1010.380(f)(7) defined a ''pooled investment vehicle'' as: (i) any investment company, as defined under the Investment Company Act of 1940,[213] or (ii) any company that would be an investment company under that authority but for the exclusion provided therein [214] and is identified by its legal name by the applicable investment adviser in the requisite Securities and Exchange Commission form. Proposed 31 CFR 1010.380(c)(2)(xviii) exempted any pooled investment vehicle that is operated or advised by certain other exempted entities, namely, a bank, credit union, broker-dealer in securities, investment company or investment adviser, or venture capital fund adviser.

Comments Received. A number of commenters, including most of those representing the investment industry, generally supported this exemption and sought clarifications as to its scope and applicability vis-à-vis specific scenarios (*e.g.,* its applicability to entities within the structure of a pooled investment vehicle, or to certain funds not denominated ''pooled investment vehicles'' but that otherwise satisfy the criteria for exemption). Certain commenters also proposed that additional types of investment vehicles, structured similarly to pooled investment vehicles but not expressly exempted by the CTA, also be exempted from the CTA's requirements.

Final Rule. The final rule adopts 31 CFR 1010.380(c)(2)(xviii) as proposed, as well as 31 CFR 1010.380(f)(7) with a clarifying modification. As an initial matter, FinCEN understands that the statutory exemption is the result of extensive consideration and reflects Congress's judgment as to the appropriate scope of the exemption. FinCEN accordingly views the statutory text of the exemption as a reflection of deliberate and considered decisions to include and exclude certain types of vehicles, from which FinCEN is reluctant to deviate.

FinCEN further notes that the term ''pooled investment vehicle'' encompasses a wide variety of investment products with a wide range of names and structures, which present a range of risk profiles. It is accordingly impracticable for FinCEN to prospectively opine on the applicability of the exemption to specific structures that may not carry the name ''pooled investment vehicle.'' However, as a general principle, FinCEN notes that a vehicle's eligibility for this exemption does not hinge on its nominal designation, but rather on whether the vehicle or entity satisfies the elements articulated in the final regulatory text.

A few commenters sought clarity as to how entities within the structure of a pooled investment vehicle would be treated, noting, among other things, that pooled investment vehicles will routinely create subsidiary legal entities for a variety of purposes related to the administration of the pooled investment vehicle, including to effect specific investments or acquisitions. While distinct legal entities that are wholly owned by exempted pooled investment vehicles may be integrally related to the administration of those pooled investment vehicles, whether they are exempt from the reporting requirements of the CTA depends on whether they themselves, in their own right, meet the criteria of an exemption. FinCEN declines to provide a blanket expansion of this exemption to include all entities related to a pooled investment vehicle or any subsidiary entity that would be used as a vehicle to onboard new outside capital or assets.

A few commenters noted that the timeframe between the creation of a pooled investment vehicle and its identification on the SEC's Form ADV often exceeds the beneficial ownership disclosure deadline that will apply to new companies because of the need to obtain licenses and regulatory approvals, among other things. These commenters contended that it would be unreasonable to apply the general disclosure deadline to an entity in the process of becoming exempt only because it had not concluded all of the requisite steps within this timeframe. These commenters also noted that it would be impracticable for an adviser to file an update to a Form ADV in a manner inconsistent with existing SEC filing requirements for the sole purpose of availing itself of this exemption. FinCEN agrees, and is accordingly modifying Section 1010.380(f)(7)(ii)(B) to read (new text emphasized):

(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 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).*

A number of commenters sought a variety of other exemptions for entities not specified, contending principally that nonexempt vehicles that were subject to regulation and supervision, similarly structured, and subject to disclosure requirements either via Form ADV or similar requirements should be deemed low risk and be able to avail themselves of this exemption. FinCEN declines to seek to expand the exemption at this time. As FinCEN has noted, in its view, the statute reflects deliberate decisions to exclude certain types of entities from the scope of the exemption, and to include others.[215]

k. Investment Company or Investment Adviser; Venture Capital Fund Advisers

Proposed Rule. Proposed 31 CFR 1010.380(c)(2)(x) was intended to implement the exemption for investment companies and investment advisers, and proposed 31 CFR 1010.380(c)(2)(xi) was intended to implement the exemption for venture capital fund advisers. Both provisions used the applicable CTA language [216] largely verbatim, with minor structural adjustments and the express addition of the term ''venture capital fund adviser'' for ease of reference. Like the CTA, proposed 31 CFR 1010.380(c)(2)(x) defined an ''investment company'' [217] and an ''investment adviser'' [218] by reference to their definitions in the Investment Company Act of 1940, and it required that they be registered with the SEC under one of two authorities.[219] Proposed 31 CFR 1010.380(c)(2)(xi) cross-referenced the exemption for a ''venture capital fund adviser'' under the Investment Company Act of 1940 [220] and required the adviser to have made a requisite filing with the Securities and Exchange Commission.

Comments Received. One commenter requested that FinCEN clarify that this exemption encompasses vehicles used by an investment adviser that serve as general partners or managing members of pooled investment vehicles advised by the investment adviser. Another commenter sought additional exemptions for state-registered investment advisers and other venture capital advisers not presently within the scope of the proposed exemption.

Final Rule. The final rule adopts 31 CFR 1010.380(c)(2)(x) and 31 CFR 1010.380(c)(2)(xi) as proposed. These exemptions are quite specific in the CTA, and Congress has further specified

[212] *See* 31 U.S.C. 5336(a)(10), (a)(11)(xviii).

[213] 15 U.S.C. 80a–3(a).

[214] 15 U.S.C. 80a–3(c).

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

[216] *See* 31 U.S.C. 5336(a)(11)(B)(x)–(xi).

[217] 15 U.S.C. 80a–3.

[218] 15 U.S.C. 80b–2.

[219] 15 U.S.C. 80a–1 *et seq.* (Investment Company Act of 1940); 15 U.S.C. 80b–1 *et seq.* (Investment Advisers Act of 1940).

[220] 15 U.S.C. 80b–3(*l*).

that the exemption for subsidiaries should apply to the subsidiaries of these defined venture capital fund advisers, investment companies, and investment advisers. It therefore appears to FinCEN that there is little scope for clarification here. If an entity used by an exempt adviser satisfies the criteria for one of these exemptions, it is exempt; if it does not satisfy any such criteria, for FinCEN to treat the entity as exempt would not be a clarification of this exemption, but rather the creation of a new exemption. FinCEN declines to create such an exemption at this time. Similar to the treatment of pooled investment vehicles, in FinCEN's view the statutory text reflects deliberate decisions to exclude and include certain types of entities from the scope of the exemption.

With respect to state-registered investment advisers, the extent of state supervision varies significantly, and FinCEN accordingly does not believe that seeking a blanket exemption for state-registered entities is warranted at this time. As for certain types of excluded venture capital advisers, FinCEN does not view disclosure obligations alone as sufficient to justify the expansion of this exemption, given Congress's choice to include only certain types of advisers in the exemption. As previously noted, any expansion beyond the enumerated statutory exemptions also requires the concurrence of the Departments of Justice and Homeland Security and is subject to an assessment of statutory criteria regarding the public interest and the information's usefulness.[221]

l. Inactive Entities

Proposed Rule. The CTA exempts inactive entities from the BOI reporting requirement.[222] In 31 CFR 1010.380(c)(2)(xxiii) of the NPRM, FinCEN reiterated the CTA's definition, proposed a title to the subsection for ease of reference, and proposed clarifications regarding the scope of the exemption. Specifically, FinCEN proposed to define an ''inactive entity'' as one that:

—was in existence on or before January 1, 2020 (*i.e.,* the date of enactment of the CTA),
—is not engaged in active business,
—is not owned by a foreign person, whether directly or indirectly, wholly or partially,
—has not experienced any change in ownership in the preceding 12-month period,
—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
—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.

Comments Received. Commenters generally sought clarifications or proposed expanding this exemption. Some comments argued that the $1,000 limit in 31 CFR 1010.380(c)(2)(xxiii)(E) was low and suggested raising it to $3,000 to account for inactive fees (*e.g.,* annual expenses including state franchise taxes, registered agents, domain registration, attorney and accounting fees, etc.). Commenters also urged that 1010.380(c)(2)(xxiii)(F) should clarify that the exemption would apply even if an entity had a bank account or owned certain incidental assets, such as the rights to its business name or website domain. Another commenter asked FinCEN to clarify in the preamble that the phrase ''any change in ownership'' in proposed 31 CFR 1010.380(c)(2)(xxiii)(D) would cover any alteration of a nominal or beneficial owner of an entity, any addition or subtraction of an owner, and any change in the percentage or nature of ownership interests held by a specific person, including due to a purchase or transfer of a pre-existing entity. The same commenter urged FinCEN to strengthen 31 CFR 1010.380(c)(2)(xxiii)(D) and (E) by identifying the precise date from which the 12-month period would be measured.

Several commenters asked for clarity regarding the treatment of temporarily or permanently dissolved, or terminated entities, including whether an entity that closed down in 2021 would be required to report its BOI. One commenter suggested permitting entities that completed their legal dissolution by a specified date (*e.g.,* the enactment of the CTA, or the effective date of the BOI reporting regulations) did not have to report. One commenter requested that FinCEN clarify the phrase ''engaged in active business'' in 31 CFR 1010.380(c)(2)(xxiii)(B) in the context of a dissolved entity, noting that winding up activities could be considered ''active business.'' The same commenter noted that the statute and proposed rule were also unclear with respect to whether temporarily or administratively dissolved entities would be treated as reporting companies or exempt entities under this exemption.

Final Rule. FinCEN is adopting the rule as proposed. With respect to the recommendation that FinCEN specify the date that triggers the 12-month time period in both 31 CFR 1010.380(c)(2)(xxiii)(D) and (E), FinCEN has chosen not to identify a date because the agency believes the relevant statutory language is best read to cover any 12-month period. FinCEN believes that any effort to create specific rules for when an entity is or is not engaging in active business would be both over- and under-inclusive. For example, with respect to terminating an entity, FinCEN believes the variety in types of termination and degrees of finality under state laws would require numerous special rules for small variations, and would still result in confusion if any circumstance were inadvertently unaddressed. Moreover, such an attempt would undermine FinCEN's goal of creating a uniform framework capable of accommodating different state practices or factual circumstances. With respect to the meaning of ''any change in ownership,'' FinCEN believes the proposed regulation is sufficiently clear; it would cover any and all changes in an entity's ownership.

Although FinCEN believes the text of this provision is clear, the agency understands that specific factual scenarios may arise during implementation that warrant additional clarification. In those cases, the agency welcomes questions from stakeholders and anticipates addressing their concerns through guidance.

F. Reporting Violations

Proposed Rule. Proposed 31 CFR 1010.380(g) adopted the language of 31 U.S.C. 5336(h)(1) and clarified four potential ambiguities. First, the proposed regulations clarified that the term ''person'' includes any individual, reporting company, or other entity. Second, the proposed regulations clarified that the term ''beneficial ownership information'' includes any information provided to FinCEN pursuant to the CTA or the regulations implementing it. Third, the proposed regulations clarified 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 this section. While only reporting companies are directly

[221] 31 U.S.C. 5336(a)(11)(B)(xxiv).
[222] 31 U.S.C. 5336(a)(11)(B)(xxiii).

required to file reports 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 regulation 1010.380(g)(5) clarified that a person ''fails to report'' complete or updated beneficial ownership information to FinCEN, within the meaning of 31 U.S.C. 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 reporting companies themselves. To the extent an individual willfully directs a reporting company not to report or willfully fails to report while in substantial control of a reporting company, individual liability is necessary to ensure that companies comply with their obligations. This is essential to achieving the CTA's primary objective of preventing illicit actors from using legal entities to conceal their ownership and activities. Illicit actors who form entities and fail to report required beneficial ownership information may not be deterred by liability applicable only to such entities. Absent individual liability, illicit 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.

Comments Received. Commenters generally sought clarification regarding the applicability of the reporting violations provisions. Some commenters encouraged FinCEN to minimize the potential for evasion or other related criminal behavior. One commenter asked that FinCEN coordinate with state and Tribal agencies to include a checkbox on existing state forms confirming that the filer has filed with FinCEN. One commenter asked that FinCEN provide examples of reporting violations.

Some commenters suggested that FinCEN prioritize education and focus on promoting compliance, reserving enforcement for those acting in bad faith, and noted that many businesses may not be aware of their reporting obligations at the outset. One commenter suggested that FinCEN establish a compliance hotline system to assist reporting companies. Others expressed concern about the breadth of the penalty structure. A number of commenters suggested that small businesses acting in good faith should be given a reasonable opportunity to remediate violations and come into compliance, consistent with the limited statutory safe harbor for correcting inaccurate information.[223] Many commenters asked for relief or a safe harbor for various situations where a reporting company may not be able to report the required information, where a beneficial owner or company applicant refuses to provide the required information, or where the filer of the report is relying on information provided by the reporting company or another individual, such as a trustee. One commenter asked FinCEN, before pursuing an enforcement case or action, to consider whether a filer has correctly filed other forms with another government agency with similar information, such as the IRS, and provide an exemption when those forms are accurately filed. Another suggested that U.S. citizens be exempted from penalties.

A number of commenters sought clarity on the applicability of the violations provisions. One asked whether both civil and criminal penalties could apply to the same conduct, and another asked whether a company applicant could be held liable. One commenter asked FinCEN to exclude senior officers and others without a management role in the reporting company. Another asked FinCEN to limit liability only to beneficial owners and reporting companies.

Many commenters sought clarity on the ''willful'' standard and what constitutes willfulness. One commenter suggested that ''reasonable cause'' be the standard for violations. Another expressed concern regarding uniform application of the standard by FinCEN investigators.

Final Rule. The final rule adopts the proposed rule in large part, with a clarifying modification to proposed 31 CFR 1010.380(g)(5) (renumbered 31 CFR 1010.380(g)(4) in the final rule). FinCEN views the statutory text to be sufficient regarding the availability of both civil and criminal penalties for the identified willful reporting violations, and it believes this approach satisfies the congressional intent to hold individuals accountable for such violations. In addition, the statute is clear regarding who may be held liable for willful violations, and for this reason FinCEN also declines to exclude specific categories of individuals from liability, as requested by some commenters. Willfulness is a legal concept that is well established in existing caselaw, and FinCEN will consider all facts relevant to a determination of willfulness when deciding whether to pursue enforcement actions. With regard to the availability of other penalties, FinCEN notes that nothing in the statute prohibits the application of other available criminal or civil provisions to the extent they are applicable.

With respect to compliance, as stated in this final rule, FinCEN intends to prioritize education and outreach to ensure that all reporting companies and individuals are aware of and on notice regarding their reporting obligations. FinCEN notes that the effective date of January 1, 2024 and the one-year compliance period essentially give existing reporting companies over two years from the publication of this rule to prepare to come into compliance with their reporting obligations. FinCEN will take into consideration the request to add examples of reporting violations in any future guidance or FAQs.

The final rule modifies proposed 31 CFR 1010.380(g)(5) to clarify the role of an individual in a reporting company's failure to satisfy a reporting obligation. The final rule states that a person is considered to have failed to report complete or updated beneficial ownership information if the person causes the failure or is a senior officer of the entity at the time of the failure. In eliminating the reference to substantial control and incorporating the existing definition of ''senior officer'' in 31 CFR 1010.380(f)(8), FinCEN believes that this revised provision reduces potential confusion and provides clarity as to who may be liable for a reporting company's failure to file updates and corrections. FinCEN hopes that this clarity, in turn, will ensure that the information in the database remains as complete and accurate as possible. FinCEN considered other alternatives in defining the category of individual that should be held responsible for willful violations,

[223] *See* 31 U.S.C. 5336(h)(3)(C).

including those in the substantial control definition. Ultimately, FinCEN believes that the approach of holding individuals in these specific positions of authority responsible for ensuring that the information filed with FinCEN is correct and up to date provides additional clarity and certainty and appropriately rests that obligation with those in charge of an entity.

G. Effective Date

Proposed Rule. The CTA authorizes FinCEN to determine when the regulations implementing BOI reporting obligations take effect.[224] FinCEN did not include an effective date in the proposed regulation. Rather, it sought comment on the timing of the effective date and any potential factors it should consider.

Comments Received. Commenters largely focused on the need for FinCEN to provide notice and guidance to the public about the BOI reporting requirements and the relationships between this final rule and both the access rule and the 2016 CDD Rule revisions. Some commenters noted that FinCEN should first staff and train its call center, conduct extensive outreach, and deliver educational materials to secretaries of state, Tribal offices, and the registered agent and legal communities. Others noted that the effective date should be sufficiently far out to allow for adequate notification to all affected persons. Other commenters proposed that the effective date of the reporting requirements should be the same as the effective date of the revised CDD Rule. Some commenters stated that all three rulemakings should be completed before any of the rules take effect, while others noted that the 2016 CDD Rule should be rescinded immediately upon the effective date of the final reporting rule.

Additional commenters requested the opportunity to comment on the three rulemakings contemporaneously. They argued that their views of the reporting requirements may be affected by how the reported information would be accessed and disclosed, and how it would be accounted for in the revision of the 2016 CDD Rule. Some of these comments addressed anticipated aspects of the access and revised CDD rules.

Final Rule. The final rule sets an effective date of January 1, 2024. FinCEN recognizes that collecting complete and accurate BOI 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 help 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 these national security and law enforcement objectives and support Congress' goals in enacting the CTA.

FinCEN has adopted the effective date for this final rule based on several practical factors, including, for example, 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; allowing reporting companies, and small businesses in particular, sufficient time to receive notice of and comply with the new rules; and the need for FinCEN to take steps to design and build the BOSS and to work with secretaries of state, Tribal authorities, industry groups and small business, and other stakeholders to ensure a thorough and complete understanding of the rules.

Moreover, aligning the effective date with the beginning of the calendar year may help to align this reporting obligation with other reporting and compliance obligations. FinCEN recognizes the need to ensure that reporting companies, secretaries of state and Tribal offices, and other stakeholders have a thorough understanding of the final rule and its requirements, both before and after the effective date. Accordingly, as discussed in Section B.i, implementation efforts include, as many commenters have stressed, the drafting of guidance and FAQs for reporting companies and third parties, help desk training, and a comprehensive communications and outreach strategy, among other things. FinCEN also intends to implement an outreach strategy with key stakeholders, and in particular, secretaries of state, to ensure a thorough understanding of the final rule requirements. In addition to these efforts, as will be described in the access rule NPRM, FinCEN will need to engage intensively with authorized users of the BOSS that will have access to BOI, such as federal, state, local, and Tribal law enforcement authorities, to draft and negotiate memoranda of understanding and access and security agreements for authorized users and to develop standard operating procedures and internal protocols for the adjudication of inquiries relating to reporting and disclosure.

In addition, FinCEN recognizes that a fully operational BOSS that is ready to receive reports from reporting companies is necessary to implement the reporting rule. FinCEN is working expeditiously to complete steps to design and build the BOSS so that it can collect and provide access to BOI. Upon the CTA's enactment, FinCEN began a process for BOSS program initiation and acquisition planning that has led to the development of a detailed development and implementation plan for the initial BOSS release. Based on this plan, FinCEN has moved expeditiously into the execution phase of the project, which includes several technology projects that will be executed in parallel. The access rule will provide a high-level description of how the BOSS will operate.

The selected effective date is intended to provide adequate time to complete the BOSS design and development and to secure the necessary appropriations to operate and maintain the BOSS on an ongoing basis. Assuming adequate funding, FinCEN intends for the BOSS to be ready to receive reports and provide access to authorized users by the January 1, 2024, effective date. FinCEN also intends to propose and finalize the rulemaking governing access to BOI by this date.

Importantly, FinCEN continues to seek appropriated funds to hire the necessary staff to implement the final rules, conduct outreach to stakeholders, and design and build the BOSS. FinCEN has requested a budget increase in its FY23 budget request to support BOSS operations and maintenance and to hire CTA staff. Absent additional appropriations, FinCEN may need to adjust its implementation and outreach plans.

H. Other Comments

i. Outreach and the Need To Educate the Public About Reporting Requirements

Comments Received. Some commenters recommended that FinCEN set an effective date that provides sufficient time for reporting and non-reporting entities to understand the final rule and implement appropriate compliance processes, and for FinCEN to conduct adequate outreach to the public. In addition, commenters asked whether FinCEN would assist reporting companies, beneficial owners, and company applicants by responding to questions regarding specific fact patterns relating to regulatory interpretations and exemptions. One commenter also requested that FinCEN be authorized to issue advisory opinions when requested by reporting companies,

[224] 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].'' 31 U.S.C. 5336(b)(5).

beneficial owners, or company applicants that they could rely on as authoritative for purposes of complying with the BOI reporting requirements.

Response. FinCEN envisions committing significant resources upon publication of the final rule to prepare for and enable the rule's successful implementation by stakeholders. FinCEN anticipates that these resources will be dedicated to outreach; the drafting and issuance of guidance, FAQs, and interpretive advice; and other procedures and activities. FinCEN recognizes the need to ensure that reporting companies, authorized users, and other stakeholders have a thorough understanding of the rule and its requirements, both before and after the effective date. In addition, FinCEN remains mindful of the imperative to minimize any associated burdens on reporting companies while also fulfilling the CTA's directives for establishing an effective reporting framework.[225] FinCEN appreciates that outreach and education is an important element of the effort to reduce any such compliance burdens.

FinCEN recognizes the expectation expressed by secretaries of state that they will need to field a high volume of questions and devote significant resources to addressing reporting companies' concerns, even with an effective date that provides significant time to educate reporting companies about their responsibilities, distribute guidance, and ensure that reporting mechanisms are fully functional and user-friendly. A coordinated effort with state and Tribal authorities will be crucial to ensuring proper implementation and broad education about these reporting requirements. FinCEN intends to conduct substantial outreach with stakeholders, including secretaries of state as well as Indian tribes, trade groups, and others, to ensure coordinated efforts to provide notice and sufficient guidance to all potential reporting companies.

FinCEN notes that 31 U.S.C. 5336(g) requires the Director of FinCEN, in promulgating regulations carrying out the CTA, to reach out to members of the small business community and other appropriate parties to ensure efficiency and effectiveness of the process for the entities subject to the CTA's requirements. FinCEN has engaged in such outreach throughout the rulemaking process. In April 2021, FinCEN issued an ANPRM soliciting comments from the public, including from members of the small business community. Following the issuance of the ANPRM, FinCEN met with several small business trade associations to receive input on how to make the reporting process efficient and effective for small businesses. In December 2021, FinCEN issued an NPRM in which FinCEN proposed regulations relating to the reporting of BOI and solicited input from the public, including from members of the small business community. In response to both the ANPRM and NPRM, FinCEN received and considered numerous comments from small businesses and organizations representing small business interests. In addition, FinCEN has consulted with the Small Business Administration's Office of Advocacy throughout the rulemaking process.

ii. Interaction With Other Rulemakings

This final rule is one of three required rulemakings to implement the CTA. The CTA requires that FinCEN also promulgate rules to establish the statute's protocols for access to and disclosure of BOI, and to revise the 2016 CDD Rule, consistent with the requirements of section 6403(d) of the CTA.

Specifically, 31 U.S.C. 5336(c) requires the Secretary to issue regulations regarding access by authorized parties to BOI that FinCEN will collect pursuant to 31 U.S.C. 5336(b). The access rule would implement 31 U.S.C. 5336(c) and explain which parties would have access to BOI, under what circumstances, as well as how the parties would generally be required to handle and safeguard BOI.

The CTA also requires that FinCEN rescind and revise portions of the 2016 CDD Rule within one year after the effective date of the BOI reporting rule.[226] 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).[227] The CTA identifies three purposes for this revision: (1) to bring the 2016 CDD 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.[228]

Comments Received. Commenters requested the opportunity to comment on the three rulemakings contemporaneously, as their views on the reporting requirements may be affected by how the reported information would be accessed and disclosed (in the access rule) and how it would be applied for CDD purposes (in the revised CDD Rule). FinCEN also received comments specific to the anticipated access and revised CDD rules. Comments in anticipation of the access rule focused on the structure of the BOSS, emphasizing the importance of security, suggesting specifics on FinCEN's technology, and urging FinCEN to verify the information. Commenters also raised points on the mechanism by which users would be authorized to access BOI and underlying FinCEN ID information, and access specifics for certain users, including a handful of comments proposing access to non-authorized users (*e.g.,* money services businesses and the Government Accountability Office).

Comments anticipating the revised CDD rule requested clarification on how BOI may or may not be relied upon for CDD purposes and discrepancy reporting or verification by financial institutions. Comments urged FinCEN to standardize definitions between this final rule and the revised CDD rule (including some arguing that the 2016 CDD Rule definitions should be maintained). Many comments also discussed burden on financial institutions, emphasizing that the revised CDD rule should ease, and not cause, burden. Some comments stated that FinCEN should address certain of these issues in this final rule.

Response. While FinCEN recognizes that the three required rulemakings are related, the CTA does not require them to be completed simultaneously. The CTA includes three separate rulemaking provisions,[229] and this final rule is focused solely on the implementation of the reporting requirements, as described in 31 U.S.C. 5336(a) and (b), rather than

[225] *See* 31 U.S.C. 5336(b)(1)(F), (b)(4)(B).

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

[227] 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)[.]'').

[228] CTA, Section 6403(d)(1)(A)–(C).

[229] 31 U.S.C. 5336(b)(4) (instructing Treasury to issue regulations related to reporting obligations and FinCEN identifiers); 31 U.S.C. 5336(c)(3) (instructing Treasury to issue regulations concerning access); CTA, Section 6403(d) (instructing Treasury to revise the 2016 CDD Rule).

including issues related to BOI access or revisions to the 2016 CDD Rule. Furthermore, the CTA directs FinCEN to promptly publish this final rule within a specific timeframe and contemplates subsequent rulemakings for access to BOI and revisions to the 2016 CDD Rule within different timeframes. In particular, the timeframe set for the publication of the 2016 CDD Rule—one year after the effective date of this final rule—indicates that Congress expected this final rule to be completed first. Proceeding serially in this order also ensures that important topics concerning each subject will be thoroughly considered and that the public will have ample opportunity to comment at each phase.[230] Commenters generally did not explain with specificity what aspects of the reporting rule they believe depend on choices to be made in the other two rulemakings. But commenters will nevertheless have opportunities to submit any comments they wish to provide in those rulemakings.

In addition, Congress emphasized the importance of promulgating regulations establishing reporting obligations when it established a one-year deadline for such regulations.[231] Reopening this rulemaking for further comment would result in additional delay.[232] The commenters who requested this indicated in general that their views concerning BOI reporting obligations might change depending upon how FinCEN planned to protect and disclose BOI. However, these commenters' concerns regarding data security and disclosure are more pertinent to other CTA rulemakings and are beyond the scope of this final rule. In undertaking those other rulemakings, FinCEN will consider all relevant comments.

IV. Severability

If any of the provisions of this rule, or the application thereof to any person or circumstance, is held to be invalid, such invalidity shall not affect other provisions or application of such provisions to other persons or circumstances that can be given effect without the invalid provision or application.

V. Regulatory Analysis

This section contains the final regulatory impact analysis (RIA) for the rule; it estimates the cost of the BOI reporting requirements to the public, among other items. The estimated costs for completing a BOI report depend on the complexity of the beneficial ownership structure of an entity. FinCEN's burden assessments differ for entities with beneficial ownership structures of different complexities. For entities with a simple structure (*i.e.,* one beneficial owner, with that beneficial owner also being the one company applicant) FinCEN estimates that it will cost $85.14 to prepare and submit an initial BOI report. This is comparable to (and in some cases less than) the fees that states charge for creating a limited liability company, which vary from $40 to $500, depending on the state. On the other end of the spectrum, FinCEN estimates that it will cost slightly more than $2,600 on average for entities with complex beneficial ownership structures (*i.e.,* 8 beneficial owners and two additional individuals as company applicants) to complete an initial filing, of which $2,000 is for professional fees. In the RIA (Section V. below), FinCEN estimates that 59 percent of reporting companies will have a ''simple structure,'' 36.1 percent of reporting companies will have an ''intermediate structure'' (*i.e.,* four beneficial owners and a fifth individual as the one company applicant), and 4.9 percent of reporting companies will have a ''complex structure.''

The aggregate cost of this regulation is reflective of the large number of corporations and other entities that are covered in order to implement the broad scope of the CTA. FinCEN estimates that there will be approximately 32.6 million reporting companies in Year 1, and 5 million additional reporting companies each year in Years 2–10. Given the estimated number of reporting companies, FinCEN estimates that the rule will have total estimated costs in the billions of dollars on an annual basis. The RIA's time horizon is the first 10 years of the rule, during which reporting companies will learn about and become familiar with these new requirements. Although not accounted for in the RIA, after this initial learning curve FinCEN assesses that the cost to reporting companies is likely to decrease.

While many of the rule's benefits are not currently quantifiable, FinCEN assesses that the rule will have a significant positive impact and that the benefits justify the costs. The rule will likely improve investigations by law enforcement and assist other authorized users in a variety of activities. All of this should in turn strengthen national security, enhance financial system transparency and integrity, and align the U.S. financial system more thoroughly with international financial standards.[233] The RIA includes a discussion of these benefits, and this discussion should be kept firmly in mind alongside the quantitative discussion of costs.

FinCEN has made efforts to calculate the cost of the rule realistically, but notes that because the rule is a new requirement without direct supporting data, the cost estimates are based on several assumptions. FinCEN has described its cost estimates in as detailed a manner as possible in part to inform the public about the rule and its potential impact on a wide range of businesses, including small businesses.

FinCEN has analyzed the final 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, in which there is no general federal beneficial ownership disclosure requirement. Thus, any estimated costs and benefits as a result of the rule are new relative to maintaining the current framework. It has been determined that this regulation is a ''significant regulatory action'' and economically significant as defined in section 3(f) of Executive Order 12866. Pursuant to the Regulatory Flexibility Act, FinCEN's analysis concluded that the rule will have a significant economic impact on a substantial number of small entities. Furthermore, pursuant to the Unfunded Mandates Reform Act, FinCEN concluded that the rule will result in an expenditure of $165 million or more

[230] *Cf. Transportation Div. of the Int'l Ass'n of Sheet Metal, Air, Rail & Transportation Workers* v. *Fed. R.R. Admin.,* 10 F.4th 869, 875 (D.C. Cir. 2021) (''We have recognized that, under the pragmatic one-step-at-a-time doctrine, agencies have great discretion to treat a problem partially and regulate in a piecemeal fashion.'' (cleaned up); *NTCH* v. *FCC,* 950 F.3d 871, 881 (D.C. Cir. 2020) (noting that an agency ''need not 'resolve massive problems in one fell regulatory swoop;' instead, it may 'whittle away at them over time,'" (quoting *Massachusetts* v. *EPA,* 549 U.S. 497, 524 (2007)); *Nat'l Ass'n of Broadcasters* v. *FCC,* 740 F.2d 1190, 1207 (D.C. Cir. 1984) (explaining that "'reform may take place one step at a time, addressing itself to the phase of the problem which seems most acute to the [regulatory] mind,'" (quoting *Williamson* v. *Lee Optical Co.,* 348 U.S. 483, 489 (1955)).

[231] 31 U.S.C. 5336(b)(5).

[232] *See Sierra Club* v. *Costle,* 657 F.2d 298, 398 (D.C. Cir. 1981) (noting that an agency's decision not to extend or reopen a comment period was justified in part because doing so would have resulted in additional delay when Congress had ''put a premium on speedy decisionmaking by setting a one year deadline from [a statute's] enactment to the rules' promulgation'').

[233] FinCEN anticipates that the forthcoming rulemaking on access requirements for BOI will include a detailed discussion about the potential cost savings to government agencies that may access BOI. While not directly applicable to this RIA, the benefits of reporting BOI and accessing BOI are inextricably linked.

annually by state, local, and Tribal governments or by the private sector.[234]

As a result of the rule being an economically significant regulatory action, FinCEN prepared and made public a preliminary RIA, along with an Initial Regulatory Flexibility Analysis (IRFA) pursuant to the Regulatory Flexibility Act, on December 7, 2021.[235] FinCEN received multiple comments about the RIA and the IRFA, which are addressed in this section. FinCEN has incorporated additional data points, additional cost considerations, and other points raised by commenters into the final RIA, which is published in its entirety following a narrative response to the comments.

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. It has been determined that this regulation is an economically significant regulatory action as defined in section 3(f) of Executive Order 12866, as amended. Accordingly, this final rule has been reviewed by the Office of Management and Budget (OMB).

i. Discussion of Comments to the RIA

a. General Comments

Many comments to the NPRM stated that the proposed reporting requirements are excessively onerous. These include some comments that proposed alternatives asserted to be less costly or burdensome. The comments summarized and incorporated into the RIA regarding burden are those that included quantifiable estimates or discussed the impact on a specific segment of the economy, such as small businesses.

Many comments focused on how the proposed reporting requirements might negatively affect small businesses. Multiple comments stated that costs to comply with the proposed reporting requirements would hurt small businesses during financially difficult times, with several pointing to already overwhelming regulatory requirements. One comment stated that the additional costs could shut down many businesses, while another said it would be ''greedy'' to require that businesses pay for the filing. One comment stated that, due to a lack of clarity in the proposed rule, requirements are likely to be defined through expensive litigation with the government, costs of which could be ruinous for small businesses.

Commenters also raised general concerns with the proposed rule's minimization of burden, particularly as such consideration is required under the Regulatory Flexibility Act. Responses to specific comments related to the NPRM's initial regulatory flexibility analysis (IRFA) are discussed in Section V.B. below.

Given the NPRM's assessment of the significant economic impact on small businesses, one commenter urged FinCEN to ease this burden by using the statutory maximum reporting timelines (*i.e.,* implementation date, days to file, and days to file a corrected report) and stated that Congress allowed for more flexibility than FinCEN proposed on these items. Maximum flexibility would ease the burden of the final rule, the commenter argued, as would making the Compliance Guide, required by the Small Business Regulatory Enforcement Fairness Act of 1996, as helpful as possible. Another commenter stated that the proposed rule does not provide sufficient justification for why the burden of scanning identification documents should fall on small businesses. The commenter further stated that rather than decrease the burden on small businesses as required by statute, the proposed rule would increase burden by requiring disclosure of additional information about the business not required by statute, such as business names, trade names, addresses, and unique numbers identifying the business. One commenter effectively summarized the rest by stating that the proposed rule is too complex, overly broad, and does not adhere to congressional intent to minimize burden on small businesses.

FinCEN is sensitive to concerns from small business about having to comply with a new set of regulations, and has endeavored to minimize unnecessary compliance burdens. As several commenters noted, the CTA exhorts FinCEN to ''seek to minimize burden on reporting companies,''[236] to the extent practicable. At the same time, the statute directs FinCEN to ''collect information in the form and manner that is reasonably designed to generate a database that is highly useful to national intelligence and law enforcement agencies and Federal functional regulators.''[237] This is a delicate balance. In an effort to achieve it, and to comply with applicable statutory requirements, FinCEN has not required information beyond that which is essential to developing a useful, secure database. FinCEN has also endeavored to draft the regulations as clearly as possible, although the issuance of public guidance may be appropriate to address specific questions in the future. FinCEN anticipates that this will provide greater clarity to the regulated community over time.

Regarding reporting timelines, FinCEN has explained why it views the rule's deadlines as reasonable, but also adds here that it is working to leverage technology and relationships with state, local, and Tribal authorities to make expectations clear and reporting processes straightforward. The goal is to make it as easy as possible for reporting companies of all sizes to comply with reporting requirements in the time provided. Commenters highlighted other select portions of the proposed rule that could be made less burdensome, such as the company applicant definition, beneficial owner definition, reporting company definition, reporting requirements related to addresses, and updated report requirements. The specifics of such comments are summarized in Section III above in connection with the specific provisions of the proposed rule that they address. Commenters also proposed changes to the rule that were not adopted, as also discussed in Section III above. However, the RIA does consider other significant alternatives.

One comment noted that the majority of existing entities do not retain certain information about individuals such as beneficial owners (*i.e.,* personal documents, driver's licenses, and passports) due to serious data security issues, protocols, and guidance they have received to delete such information when not needed for business purposes. FinCEN does not see its proposed regulations as requiring entities to deviate from those data

[234] The Unfunded Mandates Reform Act requires an assessment of mandates that will result in an annual expenditure of $100 million or more, adjusted for inflation. The U.S. Bureau of Economic Analysis reports the annual value of the gross domestic product (GDP) deflator in 1995, the year of the Unfunded Mandates Reform Act, as 71.823, and as 118.37 in 2021. *See* U.S. Bureau of Economic Analysis, Implicit Price Deflators for Gross Domestic Product, available at *https://apps.bea.gov/iTable/iTable.cfm?reqid=19&step=3&isuri=1&1921=survey&1903=13#reqid=19&step=3&isuri=1&1921=survey&1903=13.* Thus, the inflation adjusted estimate for $100 million is 118.37/71.823 × 100 = $165 million.

[235] *See* 86 FR 69947–69969 (Dec. 8, 2021).

[236] CTA, Section 6402(8)(A).

[237] CTA, Section 6402(8)(C).

retention practices, as there is no requirement in the proposed rules to store copies of identification documents once a reporting company has reported relevant information to FinCEN.

One comment focused on non-U.S. residents, stating that the proposed rule appears to impose another redundant layer of reporting requirements on non-resident American citizens who own small businesses and also have a business license in the United States. This comment stressed that several legislative measures and federal regulations over the years unfairly affect millions of United States citizen taxpayers, and any new FinCEN rule should exercise caution in considering both the goals and potential negative impacts on working-class Americans living abroad. FinCEN has considered statutory goals and potential negative impacts and done its best to mitigate the latter for United States residents and non-residents alike.

Finally, FinCEN received a general comment related to the NPRM's economic analysis as a whole. One commenter stated that the economic analysis ''makes major, major errors'' and is ''objectively and demonstrably wrong to a massive degree.'' The specific points raised by this commenter are addressed in the summary and analysis in Section V.B. below.

b. Cost-Related Comments

A few comments expressed concern with the estimated cost to comply with the proposed reporting rule. One commenter noted that if the estimate is accurate, the cost to small businesses will almost match the amount appropriated by Congress for FinCEN's budget for fiscal year 2022. Given the broad population to which the rule applies and the requirements it imposes, FinCEN believes the cost estimate methodology is appropriate. The overall cost estimate has increased from the NPRM given changes made to the analysis, based on comments and updated sources of information.

Commenters noted points regarding the per-entity initial and ongoing cost estimates. One commenter stated that FinCEN's proposed cost analysis is detailed and thoughtful, and its assumptions appear reasonable. The commenter further stated that using the numbers in the RIA, the estimated per-entity cost to update beneficial ownership information when changes occur is approximately $20, and the vast majority of filers (roughly 20 million in any given year) will have no filing costs. The commenter stated that these numbers reflect both the CTA authors' and FinCEN's successful efforts to minimize the burden on filers.

However, several commenters recommended that the RIA's per-entity cost estimate be reassessed. A few commenters noted that the ongoing compliance maintenance costs would likely be lower, while other commenters stated that both the initial and ongoing costs would likely be higher. Several other commenters requested more clarity and/or a more accurate estimation of the ongoing costs to small businesses.

The few commenters that suggested the ongoing compliance maintenance costs would most likely be lower referenced data from a survey conducted on covered businesses in the United Kingdom (UK) after the implementation of its beneficial ownership registry (People with Significant Control (or PSC) Register). The commenters indicated that the UK study, based on information self-reported by companies, found that after a larger first year expense, the annual compliance cost for businesses with less than 50 employees dropped to the equivalent of about $3–5. The commenters viewed it as reasonable to expect similar outcomes in the U.S., where small firms (''mom-and-pop'' enterprises, for example) have simple ownership structures that are easy to assess and update when changes occur. Two commenters explained that the per-entity cost estimate for initial compliance stops short of presenting information on the ongoing cost of compliance for small businesses. These commenters suggested that the final RIA provide estimates of the cost over time to reassure small businesses of the low cost of ongoing compliance.

FinCEN concurs that costs for simple beneficial ownership structures will be lower than for more complex entities, and has incorporated this point into the RIA. FinCEN continues to assess that the cost of compliance will be higher than the $3–5 cited in the UK study, particularly as U.S. entities learn about the reporting requirements in the first year. However, FinCEN concurs that the cost of compliance is likely to decrease as the reporting requirements become routine over time, and FinCEN will adjust its burden estimates accordingly throughout the life cycle of the rule. The RIA aims to accurately reflect the burden and costs entities will incur to come into compliance with the rule.

On the other hand, some commenters stated that the per-entity costs should be higher. One of these commenters explained that costs would include not just physical resources used to create the report, but also opportunity costs associated with employees reviewing documents and engaging in other compliance activity. Another commenter expressed concern that FinCEN miscalculated the burden and costs to smaller businesses, including those already in existence that might face interruptions in their banking relationships until they file their initial beneficial ownership reports with FinCEN. Further, the commenter stated that FinCEN's assumption that most small businesses are structurally simple ''misses the mark'' on how high administrative costs associated with rule compliance could run. Another commenter opined that the RIA's cost estimates for private sector filers and FinCEN's estimates for designing, building, and maintaining the system are both remarkably low. Specifically, the commenter recommended that the per-entity cost estimate be reassessed, explaining that identifying all possible persons with potentially significant control, getting legal advice, and collecting identification documents will take hours of time, speculating that FinCEN's estimate was off by a factor of ten. These comments are discussed in more detail in Section V.A.ii.e. below, and the per-entity cost has been reassessed to account for additional burden activities.

Several other commenters requested more clarity and/or a more accurate or complete estimation of the ongoing costs to small businesses. Another commenter indicated that it is very difficult to estimate cost for small businesses, as the rule is still unclear as to how this information will be collected, and that a more accurate estimation could be provided once the method of data collection is known and terms are more clearly defined. In response, FinCEN has updated the RIA's organization to increase clarity and added a detailed section discussing the estimated burdens and costs associated with the steps of filing initial and updated BOI reports.

Commenters raised a number of other cost considerations, including additional costs that should be considered and suggestions regarding estimates for the total number of entities, the number of entities that meet certain exemptions, and time burdens associated with the rule. Entity estimates have been updated, as described in Section V.A.ii.e. below. In the case of costs that were not initially accounted for in the RIA, but that are identified by commenters and are relevant to the final rule, FinCEN has revised portions of the RIA to incorporate them.

The following comments relate to the estimated number of reporting companies.

Total entity estimates. Some commenters raised concerns with FinCEN relying on public 2018 survey data from the International Association of Commercial Administrators (IACA) to estimate the total number of U.S. entities. Specific concerns included that the information is dated and only represents a small percentage of U.S. jurisdictions. These commenters stated that the RIA likely underestimated the number of affected entities, and therefore misjudged anticipated costs. Another comment suggested that FinCEN reach out to IACA regarding FinCEN's interpretation of their data. Other comments raised concerns with the RIA's assumption that the number of new entities each year equals the number of dissolved entities. A commenter suggested that this assumption is incorrect, and pointed out that the annual creation of domestic (U.S.) business entities in North Carolina has grown from 47,000 in 2011 to 163,100 in 2021, and that creations exceed destructions in the jurisdiction by over 40 percent in every year after 2013. Moreover, the rate and raw number of entities created has increased greatly since 2015. One comment stated that most jurisdictions have seen significant increases in the number of business entities formed in the last two years. In a sampling of states, increases ranged from 50 to 60 percent since 2018.

In response to these comments, FinCEN reviewed additional data sources and refreshed the analysis with the most up-to-date IACA data publicly available. This new IACA data included information for 2018, 2019, and 2020, which allowed FinCEN to estimate a growth factor to account for year-over-year percent increase in entities. FinCEN has updated the analysis to include an annualized average growth assumption for entity creations. For purpose of the analysis, FinCEN chooses to use a simple annualized average growth rate factor for entity formation using IACA data.

A few commenters proposed alternative data sources to consider. One commenter pointed to 2020 data published by the Small Business Administration (SBA) indicating that 99.9 percent of U.S. businesses are small businesses and 81 percent of those have no employees. The commenter argues that if a large percentage of these businesses are single-owner corporations or single-member LLCs, identifying beneficial owners will impose a near zero cost for most U.S. businesses. The same comment also suggested that FinCEN coordinate access to Census Bureau Business Register data on U.S. businesses jointly owned by spouses in order to estimate the number of these businesses, which similarly would be able to easily identify their beneficial owners at virtually no cost, in the commenter's estimation. FinCEN reviewed these suggestions and incorporated three additional public data sources from the U.S. Census Bureau into the RIA. The additional data sources supported FinCEN's approach and findings with regard to the total domestic entity estimate. Additionally, part of FinCEN's updated approach in the RIA is to identify the likely distribution of reporting companies' beneficial ownership structure complexity. The approach assumes that a majority of reporting companies will have simple beneficial ownership structures to report. FinCEN concludes that such entities would still bear a cost to comply with the rule but assesses that these costs would be lower for simple beneficial ownership structures.

Another commenter stated that the RIA's reporting company estimate appears to include sole proprietorships, even though they are unlikely to meet the reporting company definition. The comment pointed to the National Small Business Association's estimate that 12 percent of small businesses (which account for 99.9 percent of all businesses in the U.S.) are sole proprietorships, which amounts to a little over 3 million businesses. The commenter states that FinCEN should either reduce its overall cost estimates or acknowledge that they very likely overstated the aggregate cost to businesses. Although the underlying data source FinCEN relies upon for total entity estimates does not specify that it includes sole proprietorships, FinCEN acknowledges that there are likely some number of sole proprietorships included in the reporting company estimate. Nonetheless, FinCEN maintains its conservative approach to total cost estimation. Furthermore, FinCEN is unaware of a methodology to remove sole proprietorships without also removing potential single-owner LLCs and other similar entities that meet the definition of a reporting company.

Other alternative data sources included statistics that states provided in comments. As of December 31, 2021, for example, Michigan had 1,051,163 active entities on record, 992,574 of which were domestic Michigan entities. North Carolina had over 1,810,000 registered entities as of 2021, 843,300 of which were entities in good standing (neither permanently dissolved nor in temporary administrative dissolution status).[238] North Carolina and Michigan were reporting jurisdictions in the updated IACA data used for the total domestic entity estimate. Using the growth factor established, FinCEN projected the total domestic entity estimates of 871,681 and 820,561 for 2024 in Michigan and North Carolina, respectively. Given the likelihood that data provided by these two comments includes non-reporting companies (*i.e.,* exempt entities), FinCEN believes that the statistics from these comments further demonstrate the approach's relative accuracy and reliability.

Finally, multiple comments made reference to how many businesses or small businesses would be affected by the rule but did not provide sources for these statements. Such comments included claims such as there would be compliance costs for ''over 12 million tiny businesses'' and obligations on tens of millions of businesses. These statements generally support FinCEN's conclusion that tens of millions of businesses, most of which are likely to be small, will be affected by the rule.

Overall, concerns raised by commenters were addressed by numerous updates to the RIA. Specifically, FinCEN used the most up-to-date IACA dataset, established a growth factor, reviewed additional data sources from the U.S. Census Bureau, and applied a distribution of reporting companies' beneficial ownership structure complexity.

Entity lifespan. A commenter stated that FinCEN underestimated the length of time that entities will have ongoing update obligations, citing to state data that demonstrate that 50 percent of entities in North Carolina survive their first six years, and more than 40 percent remain in existence beyond their tenth year. FinCEN did not make any assumptions in the NPRM's analysis about the lifespan of an entity and is not making any such assumption in the final analysis. The 10-year horizon referenced in the NPRM was for the present value calculation to discount the near-term expected annual impact into today's dollar value. The rule's impact was not estimated into perpetuity but instead at a 10-year horizon, and captures the bulk of the near-term impact of the rule. Because

[238] FinCEN assumes that these statistics refer to entities created in those respective states. While this assumption is not clarified in the Michigan comment, it is supported by a statement in the North Carolina comment that ''unless stated otherwise, all figures represent North Carolina domiciled entities only and do not reflect registrations with the Department of entities formed in other states or foreign countries.''

FinCEN does not incorporate an assumption for entity lifespan, and therefore, does not net out any cost savings from entity dissolutions that may occur within that 10-year present value estimation period, FinCEN's estimates will overestimate the overall impact within the 10-year period.

Trusts. In the RIA, FinCEN asked for comments on data sources to determine the total number of trusts and what portion of the total are created or registered with a secretary of state or similar office. One commenter noted that trusts are neither created nor registered with the Corporations Division in Michigan. Given this, FinCEN has not changed the approach to trusts in the RIA. The reporting company estimate relies on an updated (2021) IACA survey that provides ''the number of entities registered . . . in responding jurisdictions.'' [239] FinCEN therefore assesses that if any trusts are included in the data, they would have been required to register with a secretary of state or similar office.

Exempt insurance companies estimate. One commenter stated that the NPRM's estimate of insurance companies could be higher; however, FinCEN assesses that this depends on facts and circumstances. For example, a determination on whether a particular captive insurance company meets the insurance company definition depends on factors like the company's structure and business activity. FinCEN emphasizes that the sources used for the exemption estimates should not be viewed as encompassing all entities that may be captured under the exemption.

The comment further notes that the NPRM omits any count of exempt insurance companies from Table 2, which summarized FinCEN's estimate of the number of entities in each of 22 exempt categories that were subtracted from the total entity estimate developed in the NPRM. FinCEN did not subtract insurance companies from the total entity estimate in the NPRM based on an assumption that such entities would not have been counted in the underlying data; however FinCEN does not include this assumption in the final RIA. Finally, the comment disagreed with the statement in the NPRM that there is likely overlap between insurance companies and state-licensed insurance producers. FinCEN concurs with the commenter that there is likely little overlap between the two exemptions, and has revised the RIA accordingly.

Exempt tax-exempt entities estimate. A commenter raised concerns with the estimate of these entities in the NPRM, which was based on 2018 IACA survey data and totaled approximately 2.8 million. The commenter, North Carolina's secretary of state, asserted that many entities formed as nonprofits under North Carolina law (144,700, or 17 percent) will not satisfy the criteria for the tax-exempt entity exemption because such entities are neither a 501(c) nor a 527 entity under federal law, and were therefore not properly accounted for in the RIA. More specifically, under North Carolina law, such entities are not required to obtain federal tax-exempt status from the IRS, and many are either unqualified for such status or otherwise choose not to obtain federally exempt status. Therefore, the commenter contends that FinCEN overestimated the number of entities that will qualify for this exemption and therefore underestimated the costs.

In light of this comment, FinCEN sought to more accurately reflect the number of entities with federal tax-exempt status, taking into account that not all nonprofits are tax-exempt at the federal level. As shown in the RIA, the estimate for this category has decreased to approximately 2.4 million entities.

Exempt inactive entities estimate. A commenter suggested that entities considered ''inactive'' in state registries should be included in the reporting company estimate (and not excluded). This commenter, North Carolina's secretary of state, noted that it is probable that many dissolved entities in North Carolina will have reporting obligations because the vast majority of company dissolutions in that state are temporary and do not prevent a dissolved entity from conducting business. Of the over 1,810,000 registered entities in North Carolina, only 13 percent are permanently dissolved. Another 40 percent are in temporary administrative dissolution status, with another 46 percent entities in good standing.[240] Over the past three years, 44,000 entities resolved their temporary administrative dissolution and were reinstated, representing about 34 percent of the administrative dissolutions filed during that same three year period. The commenter indicated they do not have information to reliably estimate what percentage of the administratively dissolved entities are, in fact, no longer actively engaged in business. The commenter suspects that the number may range from 60 to 70 percent of all administratively dissolved entities. The commenter recommended that if FinCEN takes the position that administratively dissolved entities are not exempt as reporting companies, it should update its RIA to calculate the costs of compliance for the approximately 727,000 North Carolina entities that are in temporary administrative dissolution status but able to conduct business, as well as 239,000 permanently dissolved North Carolina entities that cannot be confirmed to have concluded winding up business. The comment notes that these costs include approximately $966,000 (approximately $1 per entity) in unfunded mandates to North Carolina associated with notifying entities about the reporting obligation.

FinCEN does not estimate a number of entities that fall under the inactive entity exemption given the lack of data regarding entities that will meet the exemption's criteria. That underlying data source for the total entity estimates contains statistics reported by the states to IACA. If the states reported temporarily or permanently dissolved registered entities in the counts to IACA, such entities are included in FinCEN's analysis. The reporting company estimate increased from the NPRM, and the estimate is corroborated by other sources. FinCEN addresses comments related to indirect state costs in the RIA as well.

The following comments relate to additional costs or burdens that should be considered in the RIA.

Estimated time burdens for filing reports. A few commenters stated that the estimated time burden of 70 minutes for filing initial reports was unrealistically low given the complexity of the requirements. One comment stated that the 20 minute allotment to read the form and understand the requirement from the initial report time estimate should be increased to no fewer than 4.5 hours per report. This commenter asserted that FinCEN should estimate three hours for one senior official to read the final rule, one hour for one senior official to take the necessary steps to determine whether the entity is a reporting company, and one half-hour for a second senior official to consider the analysis and concur. The commenter stated that based on the NPRM's page length, the final rule is likely to be at least 180 pages long, supporting their three hour estimate for a preliminary reading (*i.e.,* one page per minute). The comment cautioned that to the extent the form, its instruction, and

[239] FinCEN accessed this description by selecting ''2021 International Business Registers Report'', available at *https://www.iaca.org/ibrs-survey/*. Then, FinCEN selected ''BD—Registered Entities'' to view the description of the data.

[240] Another commenter provided estimates on the number of inactive companies in a state, indicating that as of December 31, 2021, Michigan had 1,583,291 inactive entities on record. Domestic, Michigan entities account for 1,485,897 of the inactive entities.

any accompanying guidance released exceeds 20 pages, FinCEN should account for this increased complexity under this assumption. Accordingly, FinCEN has increased this time estimatein the RIA.

In response to the RIA's assumption of 30 minutes to identify and collect information about beneficial owners and company applicants as part of the initial report time estimate, the commenter shared that FinCEN should estimate that a senior official will spend one hour, and an ordinary employee will spend two hours, per entity determining its beneficial ownership. FinCEN has adjusted this time estimate in the RIA by different amounts depending on the complexity of beneficial ownership structure.

Commenters argued that burdens related to locating company applicants, particularly for companies created years ago, should be accounted for in the RIA. One comment stated that to comply with the proposed reporting requirements, thousands if not millions of small or medium businesses will be forced to spend an inordinate amount of time searching for the person who submitted their formation filing. This will cause them to incur costs and time away from their businesses, a burden not anticipated by the RIA. Given that the final rule removes the requirement for existing entities to report company applicants, this burden is not included in the RIA. However, FinCEN considers an alternative scenario in which this activity is required.

In addition, a commenter stated that the Paperwork Reduction Act may require consideration of additional burden activities beyond those noted by FinCEN in the 70-minute time period for filing initial reports. Specifically, the comment stated that some burdens do not appear to have been addressed in the NPRM, including having to acquire, install, and use technology and systems to file requisite reports, as well as reviewing collected information. References to this comment are included in the time burden estimates for initial and updated BOI reports.

One commenter states that the NPRM's assumption (based on underlying data from the UK) that 87 percent of reports will include one or two beneficial owners is impossible given the proposed definition of beneficial owner. The commenter assesses that the proposed definition would result in at least three beneficial owners (President/CEO, Treasurer/CFO, and corporate secretary) in addition to any 25 percent or more owners. Including any other senior officer and person that has ''substantial influence over important matters'' would result in reporting companies generally having at least four or five and probably more likely 15 to 25 beneficial owners. The comment states that the estimates provided by FinCEN in the RIA are off by at least 400 percent and quite likely several times that, and therefore it is ''impossible'' that the cost estimates are correct. FinCEN considered this comment and included a different estimate of the number of beneficial owners per report in the RIA. However, FinCEN continues to assume that the majority of reporting companies will have a simple reporting structure, such as an LLC which has a single owner and no other beneficial owners.

Estimated hourly wage. A few commenters stated that FinCEN's estimated hourly wage rate of $38.44 per hour was unrealistically low. One commenter criticized FinCEN's decision to tether the estimated wage rate for each reporting requirement to the mean hourly wage rate for all employees. The comment asserted that the FinCEN filing process is going to be undertaken by senior management or highly paid professionals, as opposed to ordinary employees. The comment concluded that the cost per hour is going to be two to three times the figure estimated by FinCEN. Similarly, one comment estimated the average cost to be $500 per hour—significantly higher than FinCEN's estimate.

Another commenter echoed this sentiment, noting that it would be unlikely that an ordinary employee would be the sole person called upon, without supervision, to understand the FinCEN filing requirement and make filing decisions on behalf of an entity. The comment asserted that the work associated with FinCEN's filing requirement would require a senior officer or equivalent, and likely demand the services of a professional. The comment concluded that a more accurate cost estimate would be at least twice the amount estimated by FinCEN. Similarly, another commenter argued that the loaded wage rate is unreasonably low because the vast majority of small businesses will rely on attorneys and/or accountants to prepare their initial filings. The comment concluded that the median hourly Certified Public Accountant (CPA) rate in the U.S. is $210/hour, and after considering personnel time plus professional time, the actual costs of complying with initial beneficial ownership reporting requirements would likely be at least $600 per initial beneficial ownership filing.

The wage rate is adjusted in the RIA to reflect some of this feedback. This has increased the estimated hourly wage rate.

Costs of professional expertise. Multiple comments stated that the RIA should have included in its cost estimate the costs to reporting companies, and particularly small businesses, of hiring professional experts to help them understand and comply with the rule. Commenters gave examples of lawyers, accountants (many comments cited CPAs), and U.S. tax preparers as professionals that companies would likely consult to understand the reporting company definition, identify beneficial owners pursuant to the rule's definition and their business structure, and prepare initial and updated reports, among other compliance steps. One commenter noted having polled attorneys who represent early stage and startup companies, and reported that the attorneys expected to spend a substantial amount of time with clients, on an ongoing and continuous basis, regarding the proposed rule and its frequent update requirements. Commenters noted that the penalties for violating the rule's reporting requirements create an incentive to obtain this expertise.

A commenter noted, in a sentiment echoed by others, that small businesses cannot afford attorneys, accountants, and clerks, and will instead rely on do-it-yourself compliance. However, other commenters stated that small businesses were likely to hire external expertise. One comment anticipated that the vast majority of small business owners will rely on outside professionals, and another stated that entities are more likely than not to require the help of a professional. A comment stated it was highly likely that professionals will add guidance on complying with the rule to their current service offerings, but the commenter hoped that financial institutions would not be expected to provide guidance. A commenter noted that paying for external legal counsel to comply with the requirements would impose a ''new cost on small businesses at a time when they are trying to recover from two years of pandemic-imposed recession, and would not be in the public interest.''

Regarding potential cost estimates for hiring this expertise, one comment noted having been quoted ''1000s'' (of dollars, presumably) by CPAs to fill out the BOI report. Another comment stated that FinCEN should estimate one hour of outside professional review per document (with one document per entity, and including study of the entity's ownership and control structure) plus client consultation time,

for a total of two hours of professional time spent per entity. The comment states that this accounts for the expectation that some entities will require numerous professional hours due to complicated ownership and control structures (increasing the cost estimate per entity), while some entities will share a professional and thus may share client consultation time (decreasing the cost per entity).[241] One comment offered that between three and five hours for the initial report would be more realistic, as many reporting companies will need time for exchanges between themselves and outside professionals to ensure they understand applicable requirements and file reports correctly. A comment proposed the cost of $400 per hour for retaining outside professionals, based on a recent SEC PRA analysis.[242]

Given the many points raised by commenters on this topic, FinCEN assessed and included a cost for hiring professionals to comply with the requirements in the RIA.

Costs of data security. A couple of commenters noted that the RIA failed to consider the substantial harms that could be experienced by reporting companies, beneficial owners, and company applicants should the images of identifying documents required to be submitted under the rule not be kept secure by either FinCEN or by those who collect the images for submission to FinCEN. Commenters explained that many, if not most, small businesses that will comprise the bulk of reporting companies will lack the security and privacy tools necessary to protect their stored copies of the imaged documents they must collect from their beneficial owners and company applicants. Those businesses will be vulnerable to hacking, spoofing, and malware attacks that could result in the disclosure of the imaged documents and their use for criminal purposes. The law firms and service companies that assist in business formations likewise will face elevated risk if they assist their clients with submission of their reports and therefore begin to accumulate electronic images of the required forms of identification.

Another commenter noted that while FinCEN does an admirable job estimating the regulatory cost of the paperwork burden associated with the proposed regulations, it does not estimate, or even acknowledge, that through the process of FinCEN collecting personally identifiable information from companies' beneficial owners, hundreds if not thousands of individuals will be subject to identity theft. The commenter further states that FinCEN should publicly commit to pay for credit monitoring and identity theft protections for any victims of unauthorized BOI disclosure, either through an unauthorized data breach, or through unauthorized disclosure of BOI from an agent or employee of the government. In response to these comments, a discussion of data security costs was added to the RIA.

Costs to exempt entities. One comment stated that the burden to exempt entities of having to understand the reporting requirement and relevant exemptions should be included. The commenter stated that the decision to report must be made not just by each reporting company but also by exempt entities. Citing the reporting violation penalties and ''willful'' standard, the comment stated FinCEN will not be sympathetic to non-filing entities that do not read or analyze the final rule or reporting form prior to deciding not to file. The comment concluded by stating that on this basis, the cost to read and understand the final rule will be borne by all 30 million entities that FinCEN estimates exist in the United States. This cost consideration is discussed in the RIA, but the RIA does not quantify a specific cost estimate for such activity for the reasons stated therein.

Costs of tracking updated information. Other comments asserted that the burden estimate does not take into account the time and effort required by reporting companies to track beneficial ownership changes in compliance with the reporting requirements. One commenter argued that if reporting companies are required to update any of their beneficial ownership information within 30 days of any change, FinCEN should account for monthly or recurring review of such information. This cost consideration is discussed in the RIA, but the RIA does not quantify a specific cost estimate for such activity for the reasons stated therein.

Cost of government audits. One commenter stated that it is unclear if the estimated FinCEN costs include costs associated with audits required by the CTA. Another commenter noted that the CTA imposes years-long audit obligations on Treasury, the Treasury Inspector General (IG), and the Government Accountability Office (GAO) to evaluate registry operations, examine exempt entities, assess state incorporation practices, and determine whether additional entities should disclose their beneficial owners. The comment stated that given the RIA's magnitude of estimated entity counts, the only way effective audits can take place is if the registry produces automated reports to auditors. In addition, the commenter states that auditors will need to work directly with FinCEN as well as state and Tribal agencies to ensure the auditors are using reliable data and effective audit procedures. The commenter stated that such automated data reports and auditing activities should be an explicit part of the overall cost benefit analysis. FinCEN does not dispute that there may be costs associated with all of these activities, but FinCEN assesses that such activities are outside of the scope of this rule. The costs of the CTA's required audits and studies therefore are not estimated herein.

The following comments refer to the RIA's discussion of costs to state, local, and Tribal authorities, costs to FinCEN, and potential costs to the government and third parties in identifying noncompliance with the reporting requirements.

Costs to State, local, and Tribal authorities. Comments from state, local, and Tribal authorities explained that if secretaries of states and other similar offices were required to provide notice of the reporting obligations and a copy of, or internet link to, FinCEN's BOI reporting form, this would result in a significant cost and substantial increase in duties to such offices. Particularly, commenters noted that these offices will likely only have a mailing address for the registered agent of a business entity and that the time and cost of mailing paper notices is significant. Commenters also raised concerns that filing offices would have no way to determine which entities are reporting companies that should receive such notices and that the action of sending such notice would result in entities perceiving the requirement as a state-level regulation. Commenters raised additional concerns that state, local, and Tribal authorities would have expenditures beyond providing notice. Commenters stated that the potential future responsibilities of such offices related to the CTA remain unaddressed. Commenters anticipated that customer service agents at filing offices will spend a considerable amount of additional time responding to CTA compliance questions, and that additional staff will be needed. Another commenter noted that filing office staff cannot provide legal advice and will not be able to

[241] The commenter caveated that this economies of scale may not occur to the extent that ownership and control structures vary among related entities.

[242] Securities and Exchange Commission, *Holding Foreign Companies Accountable Act Disclosure, Release No. 34–93701* (Dec. 2, 2021), p. 56, available at *https://www.sec.gov/rules/final/2021/34-93701.pdf.*

answer such inquiries, which will likely lead to frustration. The commenter also noted that receiving calls related to the CTA will impose costs on filing offices even if such calls are redirected to FinCEN.[243]

Multiple state authorities commented that the costs associated with the rule would result in unfunded mandates. While some commenters noted that FinCEN anticipated indirect costs to such authorities in the RIA, comments suggested that these costs were substantially underestimated. One commenter stated that costs could exceed $1.34 million for notifications to entities and responses to entities' inquiries.[244]

To minimize these costs and burdens, commenters proposed that FinCEN should do the following:

—Provide dedicated support to relieve the states
—Provide a mechanism for reimbursing the states for these substantial costs
—Provide dedicated customer service for applicants, reporting companies, and beneficial owners, such as a customer service call center
—Develop an online wizard to assist businesses in determining filing requirements without assistance
—Not expect secretaries of state to change their business registry systems or databases
—Not expect secretaries of state to make any legislative changes
—Limit offices' exposure by adding a link to a FinCEN website on secretaries of states' websites
—Not require additional mailings by secretaries of state
—Reconsider the scope of the proposed rule as it relates to obligations of dissolved entities, preexisting companies, and obligations to report company applicant information

FinCEN appreciates these suggestions, and will continue to review the suggestions in light of the cost estimates commenters provided. FinCEN is sensitive to the concerns articulated by these commenters, particularly those related to cost, and notes that the rule does not impose direct costs on state, local, and Tribal governments. Moreover, consistent with the requirements of the CTA,[245] FinCEN intends to coordinate closely with state, local, and Tribal authorities on the implementation of the rule and efforts to provide notice of the reporting requirement. A discussion on certain indirect costs to state, local, and Tribal authorities is included in the costs section of the RIA.

Costs to FinCEN. A commenter stated that there was no explanation or underlying information about what is encompassed in the NPRM's estimates of costs to FinCEN. The commenter raised that the proposed rule did not mention whether FinCEN plans to use the Beneficial Ownership Data Standard (BODS)[246] as a basis for developing the Beneficial Ownership Secure System (BOSS). The commenter stated that the use of the BODS could potentially save millions of taxpayer dollars in U.S. database development costs. The commenter stated that at a minimum, the RIA should make clear to what extent FinCEN plans to take advantage of the BODS as an established guide for collecting and structuring beneficial ownership data. Additionally, the comment noted that the proposed rule did not describe any of the BOSS's expected features or the extent to which estimated software costs already include any of the associated expenses. The comment included examples of such features. In response, FinCEN notes that FinCEN's IT development included outreach on existing beneficial ownership models, to include BODS. A description of what the estimated IT costs to FinCEN encompass is included below; however, additional discussion of database functionality and access is expected in forthcoming BOI access rulemaking.

Another commenter noted that the cost of developing and building the BSA database in 2010–2014 was in excess of $100 million, and costs approximately $27 million per year to operate. The commenter stated that the BOSS will cost at least that much in 2022–2025 dollars. As noted in the RIA, FinCEN anticipates that the BOSS will build upon existing BSA infrastructure to the extent possible; however, cost estimates have been increased due to its complexity. An additional comment stated FinCEN's cost estimates must include the provision of adequate resources to partner with and support state, local, and Tribal jurisdictions. These should include funding for materials (*e.g.,* fact sheets, FAQs), for the availability of FinCEN domestic liaisons for relevant jurisdictions, and for other support to ensure seamless implementation. Such activity is accounted for in the non-IT FinCEN cost estimates included in the RIA.

Potential costs from identifying noncompliance. The NPRM discussed that FinCEN and other government agencies may incur costs in enforcing compliance with the regulation, and noted that FinCEN plans to identify noncompliance with BOI reporting requirements by leveraging a variety of data sources. FinCEN requested comment on what external data sources would be appropriate for FinCEN to leverage in identifying noncompliance with the BOI reporting requirements and what potential costs may be incurred by third parties.

One commenter, a financial institution, stated that financial institutions are likely one of the best sources of data for identifying noncompliance with the proposed rule. The commenter provided the example that every time a financial institution searches or makes a request to the BOSS, a lack of confirming data would be evidence of an entity's noncompliance. However, the commenter strongly urged FinCEN to not outsource noncompliance detection to financial institutions that already struggle under the weight of helping regulators prevent and solve crime. Doing so, the commenter argued, would increase already significant costs and reduce efficiencies by requiring financial institutions to assist and counsel customers to meet the proposed rule's requirements.

Two commenters identified government data sources that could be cross-referenced to identify noncompliance. One commenter indicated that data lists of corporations and limited liability companies, domestic and foreign, that have filed or registered with a specific secretary of state office could be generated, which could be leveraged to cross-check for noncompliance. Another commenter indicated that FinCEN could cross-reference IRS filings for certain entities. However, the commenter, an attorney, explained that professional experience indicated that there is significant noncompliance in reporting foreign ownership of U.S. disregarded entities to the IRS.

In response to the NPRM's question on this topic, a state authority

[243] In addition, one commenter stated that filing offices would spend time and resources researching information about company applicants given the proposed rule's requirement that existing entities report company applicant information, which the commenter stated was unmanageable and would require an estimated over 22,500 staff days to search paper records. However, this cost is not applicable to the rule given that company applicant reporting for existing entities is no longer required.

[244] The commenter separately estimated $232,000 to notify and respond to corporate entities and $1,111,000 to notify and respond to administratively dissolved, permanently dissolved, and nonprofit entities that the commenter stated were underestimated in the NPRM's reporting company estimate. FinCEN has addressed the comments related to the reporting company estimates separately.

[245] 31 U.S.C. 5336(d).

[246] The BODS is an open data standard for beneficial ownership registries designed by OpenOwnership.

commented that the state would incur costs if the proposed rule required it to change its existing database or existing technical processes. The comment did not describe what changes would be required for identification of noncompliance or potential cost estimates.

Another commenter suggested that FinCEN establish an online tip site, similar to those states use to facilitate reporting of unlawful employment practices, to gather information that can be cross-matched with any beneficial ownership and company information that has been filed. The comment suggested that FinCEN inquire with those states that have such tip sites on the cost of establishing a similar site.

FinCEN does not include cost estimates related to identifying noncompliance with the reporting rule in the RIA given that the responsive comments did not include cost estimates for such activity. While commenters provided input on potential avenues that could (or should not) be considered for identifying noncompliance, it is unknown at this time whether FinCEN is likely to rely on any such avenue. Such specifics will likely vary with the compliance matter. Therefore, a separate estimate of this activity is not included in the RIA; however, the RIA does discuss costs associated with compliance and enforcement efforts.

c. Benefits-Related Comments

FinCEN did not receive comments that specifically addressed the qualitative discussion of benefits from the reporting requirements in the RIA. A number of comments discussed the potential benefit the BOI database could provide to financial institutions in the context of CDD requirements. One such comment stated that the only way to provide a benefit that justifies the cost of complying with the requirement is to allow the BOI system data to satisfy financial institution CDD or other reporting requirements. FinCEN will consider this perspective as it revises the 2016 CDD Rule in accordance with CTA requirements. Also, commenters discussed the benefits of specific elements of the reporting rule; such comments are summarized in the preamble.

d. Comments on Other Topics

Comments also covered other topics pertaining to the RIA. Specifically, commenters focused on a proposed alternative scenario, estimates for individuals applying for FinCEN identifiers, and potential chilling effects on incorporation practices.

Alternative scenario of indirectly collecting BOI. The NPRM included an alternative scenario in which a reporting company would submit its BOI to FinCEN indirectly through a designated jurisdictional authority at the state or Tribal level. The RIA noted that FinCEN decided not to propose this alternative in its proposed rule due to multiple concerns that commenters raised in response to the ANPRM. However, FinCEN noted that it 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 requested comment on this subject. The NPRM also included a question on whether reporting companies would prefer to file BOI via state or Tribal governments rather than directly with FinCEN.

A few commenters to the NPRM stated that partnering with state and Tribal governments, or repurposing information filed with such authorities, would be more efficient and less costly for reporting companies than requiring reporting companies to file BOI directly with FinCEN. A commenter suggested that FinCEN require certain states to include BOI reporting as part of their formation and annual filing requirements. Another commenter noted that FinCEN's best opportunity to minimize small business compliance costs is to integrate the FinCEN filing as seamlessly as possible into existing state-level incorporation processes, and that FinCEN should reflect projected costs of material and personnel to do so in the cost estimates.

In contrast, one comment stated that the proposed rule correctly rejected this alternative of reporting companies submitting BOI indirectly to FinCEN through a designated jurisdictional authority at the state or Tribal level. Two comments from state authorities questioned why FinCEN asked whether reporting companies would prefer to file BOI with states or FinCEN. One of these commenters stated that this should have no impact on the administration of the CTA or the final rule, and that the CTA explicitly requires reporting companies to submit BOI to FinCEN. The other reiterated that the law requires that reporting companies submit reports to FinCEN.

Other commenters emphasized the importance of partnership with state and Tribal authorities in implementing the CTA. However, one state authority noted that this should be limited to notifying individuals about the requirement. That commenter opposed any approach that would require states to remit information to FinCEN. Such an approach, the commenter argued, would create inconsistent information across the United States and impose costly administrative challenges in processing and remitting the information.

As noted in the RIA's alternative scenario discussion, FinCEN intends to work closely with relevant state, local, and Tribal authorities to minimize burdens on all stakeholders to the extent practicable in the ongoing CTA implementation process.

FinCEN identifier estimates. One commenter stated that the RIA's reasoning for why an individual may apply for a FinCEN identifier is a misreading of the CTA, explaining that no statutory language authorizes FinCEN to construct a regulation to help beneficial owners conceal their identities from reporting companies. The commenter also stated that the proposed rule fails to make clear that entities seeking to obtain a FinCEN identifier must first disclose their beneficial owners to FinCEN, and that all parties with authorized access to the BOI database can promptly access the identifying information for each person assigned a FinCEN identifier. The commenter also observed that FinCEN's estimate of individuals who would apply for a FinCEN identifier, while seemingly modest compared to the total number of 25 million initial reporting companies in the NPRM, is still a large dataset. This commenter believes this estimate is artificially low because it does not take into account the many entities that may also apply for a FinCEN identifier. Further, the commenter stated that the number of entities that utilize FinCEN identifiers may be significantly more than the number of individuals that seek FinCEN identifiers. Still another factor is that, because the FinCEN identifier applicants are likely to be individuals or entities using complex ownership structures, the data itself may be difficult to parse for accurate insights. The large numbers and complex data make it impractical to expect database auditors to manually track or analyze the FinCEN identifier data.

FinCEN has updated the relevant descriptions and estimates of individuals applying for a FinCEN identifier in the RIA to be consistent with changes to the final rule. FinCEN assumes that costs associated with entities applying for and updating information related to a FinCEN identifier are accounted for in the estimates related to initial and updated BOI reports. This is because entities would perform such functions related to their FinCEN identifier through the BOI report form.

Chilling effects on incorporation practices. A few commenters expressed concern with the proposed rule's potential chilling effect on new business formation. One commenter noted that the reporting requirements and other potential obligations imposed on lawyers to verify information about reporting companies and their beneficial owners may have a chilling effect on the continued formation of entities by many lawyers who routinely form new entities for small clients. The commenter expressed concern regarding the disclosure of personal information by lawyers for companies with which they may have no involvement after formation. The commenter also stated that there is a lack of clarity regarding who would be responsible for the reporting of the information. The commenter presumes that a lawyer forming an entity for a client will likely bear the burden of filing such a report, which in turn will result in a much greater harm to those small and medium sized business clients across the country who are no longer able to obtain legal services in the creation of new entities because of the burdensome reporting and investigation requirements placed upon legal services providers.

FinCEN understands this concern. As discussed in Section III.F above, the agency has made clear in the final rule that the reporting company is ultimately responsible for both making the filing and ensuring that it is true, correct, and complete. The same is true of the accompanying certification, which is to be made on the reporting company's behalf. The revised certification language and locus of ultimate responsibility with the reporting company are consistent with other FinCEN requirements and certifications with which the regulated community is already familiar, and should therefore be sufficient to mitigate potential chilling effects based on certification concerns. Moreover, it is not uncommon for lawyers and other providers of professional services to be subject to professional and legal obligations in connection with their provision of services to clients.

FinCEN understands there may be other concerns associated with lawyers and other professionals potentially being reported to FinCEN as company applicants. FinCEN views it as unlikely that these concerns will result in chilling effects on entity formation services. Additionally, FinCEN assesses that any chilling effects that do arise—including any specific to small and medium-sized entities—should abate as service providers become more comfortable with the final rule's requirements. As discussed in Section III.D. above, FinCEN has taken steps to reduce the burden on company applicants. For example, the final rule clarifies that at most two individuals would be considered company applicants and reporting companies need not file updated reports for those individuals. Finally, the CTA does not distinguish between different types of individuals who may be company applicants.

Another commenter noted that the reporting requirements will have a disproportionately adverse effect on underserved communities. This commenter explained that one of the primary drivers of inequity in the corporate space is regulatory complexity. While established founders and companies with access to capital and experts may be able to obtain advice and comply with the proposed rule, small businesses in underserved communities that do not have such support to help them navigate this new regulatory scheme will be disproportionately disadvantaged by the proposed rule, and the net effect will be to chill formation of new businesses in these communities, limiting their economic opportunity.

Another commenter recommended FinCEN consider the potential adverse effects that frequent reporting could have on small companies seeking investors. The commenter explained that if the scope of ownership interests is not tailored appropriately, small businesses could be required to report personally identifiable information for several investors. As investors cycle in and out, more information will need to be obtained and reported, and the risk of inadvertent disclosure will rise. These risks and operational burdens could be a deterrent to seeking needed capital, or at least reduce the value of such capital. FinCEN is particularly sensitive to potential adverse consequences that this final rule could have for small businesses and underserved communities, and has made efforts to minimize burdens on these and other segments of the regulated community. Whether additional efforts are necessary is a question FinCEN will evaluate as it receives feedback from stakeholders after reporting requirements take effect.

ii. Final Regulatory Impact Analysis

a. Overview of the RIA

The RIA begins with a summary of the rationale for the final rule, five regulatory alternatives to the final rule, and findings from the cost and benefit analysis. The next section is a detailed cost analysis that considers costs to: the public (including sub-sections estimating the affected public for BOI reports, the cost of initial BOI reports, the cost of updated BOI reports, and the cost of FinCEN identifiers); FinCEN; and other government agencies. The section concludes with other cost considerations. The next section is a qualitative discussion of benefits. This is followed by conclusions. FinCEN revised some of the organization, sub-headings, and wording of the RIA for further clarity. Changes to the analysis or assumptions are clearly specified, as well as references to comments that are incorporated into the RIA. In the course of this discussion, FinCEN describes its estimates, along with any non-quantifiable costs and benefits.[247]

b. Rationale for the Final Rule

This rule is necessary to comply with and implement the CTA. As described in the preamble, this rule is consistent with the CTA's statutory mandate that FinCEN issue regulations regarding the reporting of beneficial ownership information. Specifically, the regulations implement the CTA's requirement that reporting companies submit to FinCEN a report containing their BOI. As required by the CTA, these regulations are designed to minimize the burden on reporting companies and to ensure that the information reported to FinCEN is accurate, complete, and highly useful. As also described throughout the preamble, although the U.S. Government has tools capable of obtaining some BOI, the tools' limitations, and the time and cost required to successfully deploy them, suggest the magnitude of the benefits that a centralized repository of information, free from those limitations, delays, and costs, would provide to law enforcement. Additionally, FinCEN's other existing regulatory tools have limitations. The 2016 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. But the 2016 CDD Rule has certain limitations: the information about beneficial owners of certain U.S. entities seeking to open an account at a covered financial institution is not

[247] Throughout the analysis, FinCEN rounds estimates for entity counts to the nearest whole number, and any wage and growth estimates to the nearest 1 or 2 decimal places. Calculations may not be precise due to rounding, but FinCEN expects this rounding method produces no meaningful difference in the magnitude of FinCEN's estimates or conclusions.

comprehensive, not reported to the Government, and not immediately available to law enforcement, intelligence, or national security agencies. The CTA's statutory mandate that FinCEN collect BOI will address these existing challenges and result in increased transparency of corporate beneficial ownership to appropriate government agencies throughout the United States.

c. Discussion of Regulatory Alternatives to the Final Rule

The rule is statutorily mandated, and therefore FinCEN has limited ability to implement alternatives. However, FinCEN considered certain significant alternatives in the NPRM that would be available under the statute. FinCEN replicated those alternatives here with adjustments for clarity and for incorporated changes to the RIA. FinCEN also included two additional alternative scenarios. The sources and analysis underlying the burden and cost estimates cited in these alternatives are explained in the RIA. Although not replicated in this RIA, the NPRM also included a comparison of how the estimated cost changed under different burden assumptions.[248] The NPRM's comparison illustrates that the time burden is a significant component of the overall cost of the rule and highlights the importance of training, outreach, and compliance assistance in the implementation of this rule in order to decrease the burden and costs to the public.

1. Indirect Submission of BOI

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 processes that would ultimately transmit data to FinCEN. For example, each jurisdictional authority would have to build a system to electronically receive BOI; scan, quality check, or otherwise process images; protect, secure, and store all of the BOI; and provide a receipt of filing acknowledgement. Moreover, FinCEN would still have to build numerous interfaces and all of the backend systems necessary to securely accept, validate, process, and store BOI and test each one of the interfaces with each jurisdictional authority. This approach would provide inconsistent customer experience, significantly increase testing efforts for FinCEN, and potentially create security vulnerabilities if jurisdictional authorities did not adhere to government-mandated security standards. As a lower bound estimate, if FinCEN assumes that jurisdictions would incur 25 percent of FinCEN's stated initial IT development costs of approximately $72 million, then each jurisdiction would incur approximately $18 million in development costs. As an upper bound estimate, if FinCEN assumes that jurisdictions would incur 75 percent of the stated costs, then each jurisdiction could incur as much as approximately $54 million for IT development, plus additional ongoing maintenance costs. At either end of the range, this scenario would impose significant costs on state and local governments, as well as increase the total costs associated with the rule.[249] FinCEN does not assess that this scenario will significantly decrease FinCEN's estimated costs; FinCEN will still incur costs in developing the IT systems to receive and administer access to BOI, and FinCEN will likely incur additional costs in organizing activities and reporting streams across multiple jurisdictions.

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. These comments were summarized in the NPRM,[250] and based on the issues they raised, FinCEN decided not to propose an alternative in which reporting companies would submit BOI to FinCEN through another jurisdictional authority. FinCEN noted in the NPRM that it 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 requested comment. Responsive comments have noted the challenges with implementing this scenario. A discussion of this alternative scenario is included to address comments that continued to question whether reporting to FinCEN was necessary, given that states collect such information. As concluded in the NPRM, FinCEN believes indirect reporting is not a viable alternative and rejects it.

2. Reporting Timeline for Existing Entities

The CTA requires reporting companies already in existence when the final rule comes into effect to submit initial BOI reports to FinCEN ''in a timely manner, and not later than 2 years after'' that effective date.[251] In the NPRM, FinCEN proposed requiring existing reporting companies to submit initial reports within one year of the effective date, which is permissible given the CTA's two-year maximum timeframe. As noted in the NPRM, however, FinCEN considered giving existing reporting companies the entire two years to submit initial BOI reports as authorized by the statute, and compared the cost to the public under the one-year and two-year scenarios.

In both scenarios, the estimated cost per initial BOI report ranges from $85.14 to $2,614.87, depending on the complexity of a reporting company's beneficial ownership structure. That cost does not change depending on whether reporting companies have to incur it within one year or two years of the rule's effective date. If all 32,556,929 existing reporting companies have to incur it in the same single year, the aggregate cost to all existing reporting companies is approximately $21.7 billion for Year 1, after applying the beneficial ownership distribution assumption. FinCEN assumed that if the reporting deadline for existing reporting companies was two years from the final rule's effective date, then half of those entities would file their initial BOI report in the first year and the other half would file in the second, dividing that initial aggregate cost in half to produce average aggregate costs of approximately $10.8 billion in each year.[252]

[248] *See* 86 FR 69968 (Dec. 8, 2021), Table 9.

[249] In the NPRM, FinCEN suggested that costs to State or local governments in this alternative scenario could range from 10 percent to 100 percent. Given feedback received through the rulemaking process, FinCEN is adjusting this range to be from 25 percent to 75 percent. The lower bound range increases to 25 percent to account for potential burden increases to these jurisdictions related to system requirements. The upper bound is lowered to 75 percent, since these jurisdictions are not building any disclosure methods under this scenario.

[250] *See* 86 FR 66954–69955 (Dec. 8, 2021).

[251] 31 U.S.C. 5336(b)(1)(B).

[252] Changing the estimated number of initial reports in Year 1 and Year 2 has downstream effects on other estimates in the analysis. FinCEN assumes that the estimated number of FinCEN identifier applications tied to initial report filings (the number is estimated to be 1 percent of reporting companies) would similarly extend from a one-year to two-year period. Half of the initial FinCEN identifier applications, which FinCEN assumes are linked to persons with ties to existing reporting companies, would be filed in Year 1, and the other half in Year 2. FinCEN also assumed that updated reports and FinCEN identifier information would increase at an incremental rate throughout the two-year period (rather than one-year), and therefore calculated the number of updated reports by extending its methodology to a 24-month timeframe (rather than a 12-month timeframe). From Year 3 onward, estimates related to initial BOI reports

Continued

According to FinCEN's analysis, requiring existing reporting companies to file initial BOI reports within two years of the rule's effective date instead of one results in a 10-year horizon present value at a three percent discount rate of approximately $60.3 billion instead of $64.8 billion—a difference of approximately $4.5 billion and a 10-year horizon present value at a seven percent discount rate of approximately $51.1 billion instead of $55.7 billion—a difference of approximately $4.6 billion. FinCEN assesses, however, that these long-term figures obscure the practical reality that having to incur the same cost one year from the rule's effective date instead of two years from its effective date will have little impact on most existing reporting companies. The cost is the same either way. Additionally, FinCEN's effective date of January 1, 2024 will allow for a substantial outreach effort to notify reporting companies about the requirement and give existing reporting companies time to understand the requirement prior to the one-year timeline. Because a year's difference for initial compliance does not change the per reporting company impact and because of the value to law enforcement and other authorized users of having access to accurate, timely BOI in the relatively near term, given the time-sensitive nature of investigations, FinCEN rejects this alternative.

3. Reporting Timeline for Updated BOI Reports

As in the NPRM, FinCEN considered whether to require reporting companies to update BOI reports within 30 days of a change to submitted BOI (as proposed in the NPRM) or within one year of such change (the maximum permitted under the CTA).[253] FinCEN compared the cost to the public of these two scenarios.

FinCEN assumed that allowing reporting companies to update reports within one year would result in ''bundled'' updates encompassing multiple changes. For example, a reporting company that knows one beneficial owner plans to dispose of ownership interests in two months while another plans to change residences in four might wait several months to report both changes to FinCEN. Meanwhile, law enforcement agencies and others with authorized access to—and interest in—the relevant reporting company's BOI would be operating with outdated information and potentially wasting time and resources. A shorter 30-day requirement, on the other hand, would be more likely to result in reporting companies filing discrete reports associated with each individual change, allowing those with authorized access to BOI to stay better updated.

From a cost perspective, FinCEN assumed that bundling would result in reporting companies submitting approximately half as many updated reports overall. FinCEN also assumed that bundled reports would have the same time burden per report as discrete updated reports, given that the expected BOSS functionality requires all information to be submitted on each updated report.

Were FinCEN to require updates within one year instead of 30 days, 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 potentially reduced burden in its estimate other than in the time required to collect information for an updated report, but discusses this potential collection cost more in the cost analysis section of the RIA. FinCEN's cost estimates for updated reports also do not currently account for the possibility that individuals using FinCEN identifiers might further reduce costs by alleviating reporting companies of the responsibility of filing updated BOI for those beneficial owners. This is because those beneficial owners would be responsible for keeping the BOI associated with their FinCEN identifiers updated, consistent with the requirements of the rule.

FinCEN estimated that requiring reporting companies to update reports in one year instead of 30 days results in an aggregate present value cost decrease of approximately $7.4 billion at a seven percent discount rate or $9.1 billion at a three percent discount rate over a 10-year horizon. The annual aggregate cost savings to reporting companies (which FinCEN assumes are small entities) would be approximately $519.3 million in the first year and $1.1 billion each year thereafter. These cost savings would be due to reporting companies filing fewer reports.

While FinCEN does not dismiss an aggregate cost savings to the public, the bureau does not view the savings in that amount as offsetting the corresponding degradation to BOI database quality that would come with allowing reporting companies to wait a full year to update BOI with FinCEN. As noted in both the preamble and NPRM, FinCEN considers keeping the database current and accurate as essential to keeping it highly useful, and that allowing reporting companies to wait to update beneficial ownership information for more than 30 days—or allowing them to report updates on only an annual basis—could cause a significant degradation in accuracy and usefulness of the database. While risks such as this are difficult to quantify, these concerns justify the increased cost.

4. Company Applicant Reporting for Existing Reporting Companies and Updates for All Reporting Companies

In the NPRM, FinCEN considered requiring reporting companies in existence on the rule's effective date to report company applicant information with their initial reports. FinCEN further considered requiring all reporting companies to update changes to company applicant information as they occur in the future. Many comments criticized these requirements as overly burdensome. While the final rule does not include these requirements, this alternative analysis assesses what the cost would have been if those requirements had been retained.

Numerous comments to the NPRM noted that existing entities would bear a significant cost in identifying company applicants, who may not have had contact with the reporting company since its initial formation. Based on comments, FinCEN assesses that each existing reporting company, regardless of structure, would have incurred an additional burden of 60 minutes per initial report in locating and reaching out to the company applicant(s). This estimate represents the average amount of time to locate information for company applicants, taking into account there may be instances where the company applicant is known, with easily obtained information, as well as other instances where the company applicant is unknown and difficult or impossible to locate. Using the wage estimate from the cost analysis in Section V.A.ii.e. below, this would total an additional $56.76 per initial report in Year 1. FinCEN only applies this burden to Year 1 to reflect that it would affect existing entities' initial BOI reports, which would be filed within Year 1. FinCEN acknowledges that some of the initial BOI reports in Year 1 will be from newly created entities that would likely not incur this additional time burden, but to be conservative, FinCEN applied the burden to all initial reports in Year 1 for this analysis. At least one commenter also noted that such a requirement could result in costs to state governments, as reporting companies may enlist secretaries of state

would be based on the number newly created reporting companies.

[253] 31 U.S.C. 5336(b)(1)(D).

or similar offices to help look for historical company applicants, which FinCEN has not separately calculated, but assumes is part of the 60 minutes added to the burden estimate.

In the NPRM, FinCEN estimated how many report updates would likely stem from changes to company applicant information.[254] This was based on an assumption that 90 percent of BOI reports would have one company applicant while 10 percent of reports would have two company applicants. The RIA includes an updated distribution of reporting companies' beneficial ownership structures, which is applied to this analysis. The updated distribution estimates that 59 percent of reporting companies would have no unique company applicant (the company applicant would be the beneficial owner); 36.1 percent would have one company applicant; and 4.9 percent would have two company applicants. Applying the estimated cost of an updated report from the analysis in Section V.A.ii.e. below (which increased from the cost assessed in the NPRM), this would result in an additional cost in Year 1 of $2.3 billion and $1 billion each year thereafter.

In addition to the burden of submitting initial company applicant information and subsequent report updates, companies may have also incurred a cost associated with monitoring changes to company applicant information. This cost may have been significant, especially given that company applicants are less likely to stay in regular contact with associated reporting companies. This additional burden from ongoing monitoring is not separately estimated and could result in an underestimation of the cost savings to reporting companies in this alternative scenario.

FinCEN estimated that requiring company applicant reporting and updates for existing entities results in a present value cost increase of approximately $8.3 billion at a seven percent discount rate or $9.9 billion at a three percent discount rate over a 10-year horizon. FinCEN did not select this scenario, thereby reducing the cost to small businesses.

5. Alternative Definitions of Beneficial Owner

FinCEN considered many alternative definitions of ''beneficial owner'' due to comments received in the NPRM. Some of these comments proposed that the definition of beneficial owner should match the definition in the 2016 CDD Rule, under which one person must be identified as in substantial control, with up to four other beneficial owners identified by way of equity interests of 25 percent or more, for a maximum of 5 beneficial owners.

Using the 2016 CDD Rule's definition of ''beneficial owner'' would decrease the time burden for some reporting companies reviewing which individuals to report as beneficial owners in their initial reports. This is because that definition is already known to most reporting companies, ties ownership to narrow ''equity interests'' rather than ''ownership interests,'' and caps the maximum number of beneficial owners a company can have for purposes of the rule at five. This combination would make it easier for some entities to identify individuals to report as beneficial owners, and would reduce the number of individuals they have to report. However, FinCEN assesses that the majority of reporting companies are unlikely to have more than five beneficial owners to report under the rule. FinCEN assumes that 59 percent of reporting companies will have one beneficial owner and an additional 36.1 percent of reporting companies will have four beneficial owners, and therefore would not significantly benefit in terms of reporting burden from the narrower definition.[255] Most of the benefits of using the 2016 CDD Rule's definition of beneficial owner therefore seem likely to accrue to reporting companies with more complex beneficial ownership structures, which FinCEN estimates at 4.9 percent of reporting companies. All reporting companies would benefit from being able to reuse information previously provided to financial institutions for compliance with a CDD rule with which they are already familiar (existing reporting companies) or that would have to be provided to financial institutions in order to obtain necessary financial services (new reporting companies).

Because reporting companies are already familiar with the 2016 CDD Rule and would not need to spend time understanding the requirement, FinCEN assumes that adopting the 2016 CDD Rule's definition of ''beneficial owner'' would reduce the time burden of the first portion of initial BOI reports' time burden by a third for all reporting companies, regardless of beneficial ownership structure. In the cost analysis in Section V.A.ii.e. below, the first portion of initial BOI reports' time burden is to ''read FinCEN BOI documents, understand the requirement, and analyze the reporting company definition.'' However, if the 2016 CDD Rule definition was adopted, ''understanding the requirement'' would not apply, as reporting companies are already familiar with the requirement. The second portion of initial reports' time burden, ''identify . . . beneficial owners . . .,'' would likely also be less burdensome given reporting companies may have already done this exercise for compliance with the 2016 CDD Rule. However, FinCEN assumes the decreased burden in the first portion of the time burden will already account for this. Therefore, this decrease in burden will result in a per-report cost reduction of approximately $25.23 for reporting companies with a simple structure.

Additionally, reporting companies with complex beneficial ownership structures, which FinCEN assessed to be 4.9 percent of reporting companies, will have a decreased time burden for other steps related to filing initial BOI reports and updated reports. This is because FinCEN currently assesses the costs to such entities in the scenario in which they report 10 people on their BOI report (8 beneficial owners and 2 company applicants). If the 2016 CDD Rule definition of ''beneficial owner'' was adopted, then such entities would instead report the maximum of 5 beneficial owners and 2 company applicants, or 7 people. For consistency, FinCEN assumes that this would result in a reduction of a third of the time for ''identifying, collecting and reviewing information about beneficial owners and company applicants,'' and a reduction of 30 minutes in filling out and filing the report (10 minutes for each of the 3 beneficial owners no longer reported, given the definition's cap). With all of these time burden reductions included, the initial report time burden estimate for reporting companies with complex ownership structures would be reduced by 390 minutes (650 minutes versus 260 minutes), which results in a per-report cost reduction of approximately $369 ($2,614.87 versus $2,245.95).[256]

In order to calculate the total cost change of the rule under this alternative, FinCEN assumes that all time burdens related to updated reports and FinCEN identifiers would remain the same with one exception. FinCEN applies the same time reduction for complexly structured reporting companies' updated report time burden as applied for initial reports (a decrease from 110 minutes to

[254] 86 FR 69963 (Dec. 8, 2021).

[255] *See* Table 1 in the RIA and preceding text for discussion regarding the distribution of reporting companies.

[256] This cost analysis estimates an hourly wage rate of $56.76. Dividing this wage rate by 60 minutes yields a cost of approximately $0.95 per minute; if this rate is multiplied by 390 minutes, the cost is approximately $369.

80 minutes) to account for only 7 persons submitted on the form. Therefore, FinCEN assesses that adopting the 2016 CDD Rule's definition of ''beneficial owner'' would decrease the cost in Year 1 by $3.4 billion and $614.5 million in each year thereafter. The present value cost decreases by approximately $7 billion at a seven percent discount rate or $8 billion at a three percent discount rate over a 10-year horizon. This benefit to small businesses would come at the significant cost of undermining the purpose of the CTA, which specifically calls for the identification of ''*each* beneficial owner of the applicable reporting company,'' without reference to a maximum number. As explained in the preamble, the 2016 CDD Rule's numerical limitation on beneficial owners contributes to the omission of persons that have substantial control of a reporting company, but are not reported. Replicating that approach in this rule would primarily benefit more complex entities, with the foreseeable consequence of allowing illicit actors to easily conceal their ownership or control of legal entities. This is a considerable cost to the U.S. economy that FinCEN assesses would not benefit most reporting companies. This lopsided balance led FinCEN to reject suggestions to adopt the 2016 CDD Rule's definition of ''beneficial ownership'' in the final reporting rule.

d. Summary of Findings

1. Costs

The cost analysis estimates costs to the public, FinCEN, and other government agencies. The public cost estimates included detailed analysis estimating the size of the affected public, costs related to filing initial BOI reports, costs related to filing updated BOI reports, and costs relating to obtaining and maintaining a FinCEN identifier. FinCEN estimates that it will cost the majority of the 32.6 million domestic and foreign reporting companies that are estimated to exist as of the January 2024 effective date approximately $85 apiece to prepare and submit an initial BOI report. In comparison, the state formation fee for creating a limited liability company could be between $40 and $500, depending on the state.[257] Commenters provided feedback on these cost estimates, as well as additional cost considerations, which are summarized in the cost analysis section in Section V.A.ii.e. below.

Administering the regulation will also entail costs to FinCEN. This RIA estimates costs to FinCEN for information technology (IT) development and ongoing annual maintenance, as well as processing electronic submissions of BOI data. FinCEN will incur additional costs while implementing the BOI reporting requirements. FinCEN and other government agencies may also incur costs in enforcing compliance with the regulation. The RIA includes a quantitative and qualitative discussion related to government costs. Some comments to the NPRM discussed or asked for clarification regarding the FinCEN cost estimates.

The rule does not impose direct costs on state, local, and Tribal governments. However, state, local, and Tribal governments will incur indirect costs in connection with the implementation of the rule. Comments to the NPRM from state authorities and others described potential costs that such entities may incur due to the rule. FinCEN summarizes and discusses these comments above in connection with regulatory alternatives to the final rule, and also includes a discussion of such indirect costs in the RIA.

The present value of the total cost over a 10-year time horizon at a seven percent discount rate for the rule is approximately $55.7 billion. At a three percent discount rate, the present value is approximately $64.8 billion as the aggregate cost estimate of the rule.

2. Benefits

There are several benefits associated with this rule. These benefits are interrelated and likely include better, more efficient investigations by law enforcement, and assistance to other authorized users in a variety of activities, which in turn may strengthen national security, enhance financial system transparency and integrity, and align the U.S. financial system more thoroughly with international financial standards. These benefits of the rule are difficult to quantify. A detailed discussion of the significant benefits is included in the qualitative discussion of benefits in Section V.A.ii.f. below. FinCEN did not receive significant comments regarding the estimate of benefits in the NPRM, although some comments spoke generally about the benefits BOI will bring authorized users and the wider benefits of corporate transparency.

e. Detailed Discussion of Costs

The rule will incur costs to the public related to BOI reports and FinCEN identifiers, costs to FinCEN for administering the reporting process, and costs to other government agencies that may be involved in enforcement of the reporting requirements or receive questions about the process from the public. The discussion of costs includes both quantitative and qualitative items.

1. Costs to the public

The primary cost to the public associated with the rule will result from the requirement that reporting companies must file an initial BOI report with FinCEN, and update those reports as appropriate. To assess this cost, FinCEN first estimates the affected public, which is the number of reporting companies that will be required to file. FinCEN then considers the steps and costs associated with filing an initial BOI report and updating those BOI reports. These estimations draw upon and include points raised by commenters.

Affected Public for BOI Reports

The rule requires reporting companies to file BOI reports and update them as needed. The reporting companies are the affected public for this requirement. To estimate reporting companies, FinCEN first estimated the total number of entities that could be reporting companies and then subtracted the number of entities FinCEN estimates will be exempt from the reporting company definition. FinCEN does not have definitive counts of reporting companies, but has identified information relevant to the definition. None of the information identified by FinCEN can be used in the analysis to estimate the number of reporting companies without caveats.

Reporting companies include domestic and foreign entities. FinCEN first estimated the number of domestic entities, regardless of type, that will be in existence at the rule's effective date and then created yearly thereafter. While the definition of ''domestic reporting company'' is any entity that is a corporation, limited liability company, or other entity that is created by the filing of a document with a secretary of state or any similar office under the law

[257] One commenter stated that ''the current costs charged for formation of a U.S. foreign subsidiary not owned by a large entity varies between $1,500–2,000.'' 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.*

of a state or Indian tribe, FinCEN is not able to limit its estimate of domestic entities to specific entity types or to entities created by such a filing in each jurisdiction that falls under the rule's requirement because not all entity types are specified in the underlying data and because of variance among state-by-state filing practices. This simplifies the analysis but may produce overestimations of affected entities and total burden and costs.

As noted in the NPRM, FinCEN considered many possible data sources in estimating total and annual new domestic entities.[258] While none of the considered data sources provided a complete picture of domestic entities, they provided an approximate range for estimation and highlighted 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 rule. To estimate the number of initial total and then ongoing annual new domestic entities in the NPRM, FinCEN proposed analyzing data from the most recent iteration (2018) of the annual report of jurisdictions survey administered by the IACA,[259] in which a subset of state authorities provided statistical data in response to the same series of questions on the number of total entities and total new entities in their jurisdictions by entity type. FinCEN stated in the NPRM that it proposed relying upon IACA data because the survey provides consistency in format and response among multiple states. However, FinCEN also noted potential shortcomings that the IACA data may not exactly match the definition of ''domestic reporting company'' in the proposed rule, and may have other limitations.[260]

FinCEN received comments regarding the data source for this analysis. Commenters were generally concerned that the source was outdated and included only a few states. Some comments proposed other sources. In light of these comments, FinCEN reviewed a number of public data sources from the U.S. Census Bureau.

The first, *Statistics of U.S. Businesses (SUSB),* is an annual series that provides national and subnational data on the distribution of economic data by establishment industry and enterprise size.[261] The *2019 SUSB Annual Data Table* provides the number of firms, establishment, employment, and annual payroll for U.S. businesses. The dataset totals 6,102,412 firms; however, firms included in this table must have ''paid employees at some time during the year.'' [262] Similar to the conclusion in the NPRM, FinCEN determined that this dataset had shortcomings when applying it to the reporting company definition, as it only represents employer firms and excludes a material number of North American Industry Classification System Codes (NAICS) industries that should be considered for the purposes of this analysis given entities in those industries will likely be reporting companies.[263]

The next Census Bureau data source reviewed was the *Annual Business Survey (ABS) Program.*[264] The ABS combines data results from survey respondents and administrative records to produce data on business ownership. The survey is collected from employer businesses. The table *2020 ABS—Characteristics of Businesses* provides 2019 data on the number of owners and employees for 5,771,292 employer firms.[265] FinCEN used this dataset is to estimate a distribution for reporting companies' beneficial ownership structure complexity.

The third Census Bureau data source reviewed was the *Nonemployer Statistics* (NES), an annual series that provides subnational economic data for businesses that have no paid employees and are subject to federal income tax.[266] The *Nonemployer Statistics: 2019 Table,* released in 2022, is derived from tax return data shared by the IRS.[267] This dataset provides a breakdown of the different types of legal formations of nonemployer establishments. For example, 86.46 percent of the total 27,104,006 nonemployer establishments in 2019 were sole proprietorships, as defined by the U.S. Census Bureau. FinCEN confirmed through outreach that Census categorizes single-owner LLCs as proprietorships, consistent with their equivalence for tax purposes. This percentage is relevant to the estimated distribution of reporting companies' beneficial ownership complexity.

Finally, FinCEN reviewed IACA's *2021 International Business Registers Report* to see whether the data could be used to estimate the total number of domestic entities.[268] This dataset includes statistics provided by a subset of state authorities in response to a series of questions on the number of total entities and total new entities in their jurisdictions by entity type. The 2021 version of this report provides data for 2018, 2019, and 2020 for each reporting jurisdiction.

FinCEN is relying upon IACA's *2021 International Business Registers Report* data in this analysis because it: provides a consistent survey format; is based on state authorities' data, which more closely aligns to the definition of reporting company; and includes multiple years of data that enabled FinCEN to determine a company formation growth factor and extrapolate the total number of U.S. entities expected by the end of 2024 (the rule's effective date). Given that the rule's domestic reporting company definition requires an entity to be created by a filing with a secretary of state or similar office, FinCEN believes that the most relevant data source for estimating the number of reporting companies is data provided by state authorities. Relying on data linked to federal tax filings, for example, would be further removed

[258] *See* 86 FR 69956 (Dec. 8, 2021).

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

[260] As noted in the NPRM, these data limitations included not specifying general partnerships. *See* 86 FR 69956 (Dec. 8, 2021).

[261] *See* U.S. Census Bureau, *2019 SUSB Annual Data Tables by Establishment Industry* (last revised May 27, 2022), available at *https://www.census.gov/data/tables/2019/econ/susb/2019-susb-annual.html.* FinCEN also reviewed the data in the NPRM stage, and noted it was not aware of a methodology that may be applied to ''carve out'' entities that meet the definition of reporting companies from the SUSB data. *See* 86 FR 69956 (Dec. 8, 2021).

[262] A firm is a business organization consisting of one or more domestic establishments in the same geographic area and industry that were specified under common ownership or control. The firm and the establishment are the same for single-establishment firms. For each multi-establishment firm, establishments in the same industry within a geographic area will be counted as one firm; the firm employment and annual payroll are summed from the associated establishments. *See* U.S. Census Bureau, *SUSB Glossary* (last revised April 8, 2022), available at *https://www.census.gov/programs-surveys/susb/about/glossary.html.*

[263] Among those NAICS industries not included are crop and animal production; rail transportation; pension, health, welfare, and vacation funds; and others. *See* U.S. Census Bureau, *SUSB Program Coverage* (last revised April 1, 2022), available at *https://www.census.gov/programs-surveys/susb/about.html.*

[264] *See* U.S. Census Bureau, *Annual Business Survey (ABS) Program* (last revised July 5, 2022), available at *https://www.census.gov/programs-surveys/abs.html.*

[265] *See* U.S. Census Bureau, *2020 Annual Business Survey (ABS)—Characteristics of Businesses* (last revised Oct. 26, 2021), available at *https://www.census.gov/data/tables/2020/econ/abs/2020-abs-characteristics-of-businesses.html.*

[266] *See* U.S. Census Bureau, *Nonemployer Statistics (NES)* (last revised July 12, 2022), available at *https://www.census.gov/programs-surveys/nonemployer-statistics.html.*

[267] *See* U.S. Census Bureau, *NES Tables 2019* (last revised June 27, 2022), available at *https://www.census.gov/programs-surveys/nonemployer-statistics/data/tables.html.*

[268] FinCEN reached out to IACA following their comment to the NPRM, and this source was identified in that outreach. *See* International Association of Commercial Administrators, *2021 International Business Registers Report,* (2021), available at *https://www.iaca.org/ibrs-survey/.*

from the definition of the population FinCEN aims to estimate than data provided by state authorities. FinCEN received statistics from a few state authorities in both the ANPRM and NPRM comment process.[269] However, IACA's dataset provides a consistent survey format across multiple state authorities, which FinCEN continues to assess to be the best approach for this analysis.

This approach utilizes the same source originator as the NPRM (IACA), but relies upon more updated information from the source as well as on an annual company formation growth factor, addressing a specific concern raised by commenters. FinCEN's 2024 total domestic entity estimate based on the 2021 IACA data, adjusted to 2024, is 36,510,573.

To estimate the total number of existing domestic entities in the United States in 2024, FinCEN leveraged the 2021 IACA dataset and performed the following analysis:

1. FinCEN used data from the ''Number of Registered entities by the end of the year'' dataset reported by each of the following jurisdictions: Colorado, Michigan, North Carolina, Wisconsin, Connecticut, Massachusetts, Louisiana, Rhode Island, Washington DC, and North Dakota.[270] The data were for each reported year (2018, 2019, and 2020).[271]

2. FinCEN totaled the number of entities reported for each year for each jurisdiction. The IACA data provide a breakdown by type of entity (*i.e.,* Limited Liability Company, Private Limited Company, General Partnership, or ''other'').[272] For purposes of estimating the total number of entities, the data were aggregated so that each jurisdiction had a total number of entities for each reported year.

3. Next, FinCEN calculated the percent change or ''growth factor'' for each jurisdiction from 2018 to 2019 and from 2019 and 2020.[273] The percent change for each jurisdiction from these two previous calculations was then averaged, effectively providing FinCEN with an average annual percent change for each reporting jurisdiction. Finally, FinCEN calculated an average across all jurisdictional averages for both years to provide the overall average annual percent change across all reporting jurisdictions, a 6.83 percent year over year increase.[274]

4. Next, U.S. Census Bureau data [275] were compiled for each IACA reported jurisdiction and for the total United States population for the year 2020.

5. An entity per capita rate was calculated for each of the IACA reported jurisdictions by dividing the total estimated domestic entities in 2020 (4,232,083) by the total population of respondent states for 2020 (50,040,439). The entity per capita rate was 0.085.

6. FinCEN then multiplied the entity per capita rate by the overall United States population in 2020 (331,501,080) to arrive at the estimated 2020 total domestic entities in the United States of 28,036,127.

7. Finally, by applying the growth factor of 6.83 percent per year for four years (*i.e.,* from 2020 through 2024), FinCEN projected there will be 36,510,573 existing domestic entities in 2024.[276]

To estimate the total number of new domestic entities annually in the United States after 2024, FinCEN leveraged the 2021 IACA dataset and performed the following analysis:

1. FinCEN used data in the ''Number of Incorporations'' dataset reported by each of the jurisdictions (Ohio, Michigan, Colorado, North Carolina, Wisconsin, Massachusetts, Connecticut, Louisiana, Rhode Island, and North Dakota).[277] The data were for the 2018, 2019, and 2020 reporting years.[278]

2. For each reporting jurisdiction, FinCEN calculated the three year average number of incorporations.[279]

3. FinCEN totaled the average incorporations for each reporting jurisdiction. This total was 631,738 average incorporated entities for the reporting sample.

4. Next, U.S. Census Bureau data were compiled for each IACA reporting jurisdiction and for the total United States population for the year 2020.[280]

5. FinCEN calculated the total population for IACA reporting jurisdictions by adding each individual reporting jurisdictions' population. The total population for reporting jurisdictions in 2020 was 61,140,933.

6. FinCEN calculated the rate of incorporated entities per capita by dividing the total three year average number of incorporations (631,738) by the total population for reporting jurisdictions in 2020 (61,140,933). The per capita rate was 0.01.

7. FinCEN multiplied the U.S. Census Bureau's total 2020 population (331,501,080) by the per capita rate to arrive at the annual domestic incorporation estimate of 3,425,231.

8. Next, FinCEN calculated the average growth rate factor for new annual domestic incorporations. This was performed by taking the average of the percent change between 2018 and 2019 for reported jurisdictions' total incorporations and the percent change between 2019 and 2020 for reported

[269] Such comments to the NPRM are summarized above. ANPRM comments were summarized in the NPRM. *See* 86 FR 69956 (Dec. 8, 2021).

[270] FinCEN accessed the data by selecting ''2021 International Business Registers Report'', available at *https://www.iaca.org/ibrs-survey/.* Then, FinCEN selected ''BD—Registered Entities'' to view the data labeled ''Number of Registered entities by the end of the year.'' The states that are included in the 2021 IACA dataset differ from those in the 2018 IACA data that FinCEN relied upon in the NPRM. States such as Delaware that generally have a high rate of entities per capita are not included in the 2021 dataset. FinCEN notes that inclusion or removal of such states in the analysis could have effects; however, FinCEN compares the estimates based on the 2018 versus 2021 datasets and finds that they are consistent.

[271] Two jurisdictions, Louisiana and North Dakota, only reported data for the year 2020.

[272] LLCs comprised the majority of reported entities in the data. General Partnerships are included although such entities are likely not to fall under the definition of a reporting company because FinCEN understands that states do not generally require such entities to file creation documents. The total number of General Partnerships is relatively small (22,061) and their inclusion is not expected to significantly affect the RIA's conclusions.

[273] In the NPRM, FinCEN assumed that the number of new entities each year equals the number of dissolved entities. A few commenters disagreed with this assumption. FinCEN used the 2021 IACA dataset, which included data for the years 2018, 2019, and 2020, to identify a year-over-year growth factor and extrapolate to 2024.

[274] Two jurisdictions did not provide historical data for 2018 and 2019. Their reported entities in 2020 were therefore excluded from the growth factor analysis.

[275] *See* U.S. Census Bureau, *State Population Totals and Components of Change 2020–2021* (last revised Dec. 21, 2021), available at *https://www.census.gov/data/tables/time-series/demo/popest/2020s-state-total.html.*

[276] FinCEN notes that the updated IACA data estimate for 2021 total domestic entities (using the growth factor) was 29,949,748 compared to the NPRM total domestic entity estimate of 30,247,071, which provides an example of the growth factor's accuracy. However the data reviewed by FinCEN showed that there is variation in the annual growth of entity formations over the last several years. There will likely continue to be variation in this growth in an increasing interest rate environment and potential economic turbulence. However, for simplicity of the analysis, FinCEN chooses to use a simple annualized average growth rate factor for entity formation using IACA data.

[277] FinCEN accessed the data by selecting ''2021 International Business Registers Report'', available at *https://www.iaca.org/ibrs-survey/.* Then, FinCEN selected ''BD—Incorporations'' to view the data labeled ''Number of Incorporations.'' Notably, the reporting jurisdictions differ from the ''Number of Registered entities by the end of the year'' dataset. The District of Columbia did not report its number of incorporations, whereas Ohio provided its number of incorporations but not total registered entities per year.

[278] Two jurisdictions, Louisiana and North Dakota, only reported data for the year 2020.

[279] FinCEN used the three year average of new domestic incorporations rather than most recent year (2020) of data due to the significant fluctuation in year-over-year incorporations.

[280] *See* U.S. Census Bureau, *State Population Totals and Components of Change 2020–2021* (last revised Dec. 21, 2021) available at *https://www.census.gov/data/tables/time-series/demo/popest/2020s-state-total.html.*

jurisdictions' total incorporations.[281] The average growth rate factor for new annual domestic incorporations was 13.1 percent.

9. Applying the growth factor for new annual domestic incorporations of 13.1 percent per year for four years (*i.e.,* from 2020 through 2024), FinCEN estimates that there will be 5,605,471 new domestic entities created in 2024.

FinCEN also estimates the number of foreign entities already registered to do business in one or more jurisdictions within the United States as of the effective date of the regulation and the number that are newly registered each year thereafter. FinCEN estimates these numbers based on tax filing data, noting that it may not include all entities that qualify as ''foreign reporting companies'' as defined in the rule. In 2019 there were approximately 23,000 partnership tax returns filed by foreign partnerships.[282] Using the 6.83 percent annual growth factor, which was applied to each year for five years (*i.e.,* from 2019 to 2024), the estimate of these entities in 2024 is 31,997. In addition, in 2019 an estimated 22,000 foreign corporations filed the Form 1120–F (''U.S. Income Tax Return of a Foreign Corporation'')—which is estimated to be 30,605 in 2024. In addition, another subset of foreign entities will have requirements under the rule: foreign pooled investment vehicles. The 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 report that provides identification information of an individual that exercises substantial control over the pooled investment vehicle. The NPRM separately estimated the burden and costs of foreign pooled investment vehicle reports. However, based on current database development, such reports will be filed via the BOI report form. Therefore, FinCEN now includes estimates related to this requirement as part of the BOI report burden and costs. Based on information provided by SEC staff, FinCEN estimates that at least 6,834 entities will be obligated to make initial reports as of 2021. Applying the same growth factor of 6.83 percent increases this estimate to 8,331 in 2024, when the rule comes into effect.

Adding these foreign estimates (31,997 + 30,605 + 8,331) results in an overall estimate of 70,933 foreign entities operating in the United States that may be subject to BOI reporting requirements. To estimate new foreign companies annually after 2024, FinCEN multiplied the estimate of new entities annually, 5,605,471, by the overall ratio of existing total foreign companies in 2024 to total entities based on the IACA data analysis (70,933)/36,510,573). This results in an estimate of 10,890 new foreign entities subject to the reporting companies per year after 2024.

Summing the estimates of both domestic and foreign entities, the total number of existing entities in 2024 that may be subject to the reporting requirements is 36,581,506 and the total number of new companies annually thereafter is 5,616,362.[283]

FinCEN corroborated this estimate with the reviewed Census Bureau data. The total nonemployer entities from the *Nonemployer Statistics (NES): 2019 Table* was 27,104,006. The total number of employer entities was 5,771,292 from the *2020 ABS—Characteristics of Businesses* dataset and 6,102,412 from the *2019 SUSB Annual Data Table.* Therefore, per U.S. Census Bureau data, the total number of entities in the U.S. in 2019 could be estimated to be 32,875,298 (the total of nonemployer entities from the NES and employer entities from the ABS) or 33,206,418 (the total of nonemployer entities from the NES and employer entities from the SUSB). This roughly aligns with FinCEN's estimate, though FinCEN's estimate is higher. This may indirectly address commenter's concerns that the data from a small number of states may not be applicable or inclusive enough to apply to the rule's jurisdiction.

To estimate reporting companies that will be subject to BOI filing requirements, FinCEN had to subtract the number of entities that will meet one or more of the exemptions to the reporting company definition from the number of total entities. To estimate 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. Some of these estimates have been updated from the NPRM to account for more recent or precise sources. Additionally, the 6.83 percent growth factor estimate has been applied to all of the exemption categories unless otherwise noted.[284] Although some exempt entity types may not experience the same growth as others, FinCEN chose to use the 6.83 percent average growth assumption as a general growth for consistency and simplicity. FinCEN acknowledges that some categories of exempt entities may even decline year over year. However, these are potentially outweighed by exempt entity categories that are growing year over year and that comprise the majority of the overall exempt entity population (*i.e.,* tax-exempt entities). FinCEN applied the growth factor as necessary depending on the date of the source of information. For example, if the data are based on 2021 information, FinCEN applied the growth factor for 3 years (2021 to 2022, 2022 to 2023, and 2023 to 2024).

FinCEN considered whether the data underlying FinCEN's estimate of exempt entities in each exemption category aligns with the definition of the exemption in the rule. 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. As noted in the NPRM, FinCEN identified sources for estimates using what it believes to be the best data available *related to* the exemption in question. 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 entities' estimate. Each exemption estimate is considered in detail here:

[281] Louisiana and North Dakota only reported new incorporations for the year 2020 and therefore were excluded from the growth factor analysis for this estimate.

[282] 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.

[283] For analysis purposes, FinCEN assumes that the number of new entities per year from years 2–10 will be the same as the 2024 new entity estimate, which accounts for a growth factor of 13.1 percent per year from the date of the underlying source (2020) through 2024. Annually thereafter, FinCEN assumes no change in the number of new entities. FinCEN provides an alternative cost analysis in the conclusion section where the 13.1 percent growth factor continues throughout the entire 10-year time horizon of the analysis (*i.e.,* through 2033). However, this growth factor is possibly an overestimate given that it is a based on a relatively narrow timeframe of data (two years).

[284] This analysis generalizes trends across different categories of exemption categories that may not be the case in practice. For example, the number of entities in some exemption categories (such as securities reporting issuers, banks, credit unions, or brokers or dealers in securities) could decrease over time.

1. *Securities reporting issuers:* FinCEN relied upon information provided by SEC staff. This estimate is 7,965.[285] The number is provided by SEC staff based on analysis of all operating companies that filed periodic reports pursuant to the Securities Exchange Act of 1934 with the SEC in calendar year 2021.

2. *Governmental authorities:* FinCEN relied 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.[286] FinCEN requested comment in the NPRM on whether such entities should be scaled for future entity count projections, and did not receive a response. FinCEN assesses that governmental authorities' formation or destruction is not connected to economic growth. Therefore, FinCEN does not apply the growth factor to this estimate and used a total governmental entity count of 90,126.

3. *Banks:* FinCEN accessed the number of Federal Deposit Insurance Corporation (FDIC)-insured entities as of June 30, 2022, through the ''Institution Directory'' on FDIC's Data Tools website. FinCEN searched for active institutions anywhere in the United States, which resulted in 4,780 insured institutions (banks).[287] FinCEN also considered whether to include in this estimate uninsured entities that are required to implement written AML programs as a result of a final rule issued on September 15, 2020.[288] However, given that the exemption may or may not apply to these entities, FinCEN did not include them. FinCEN did not apply a growth factor to these entities because of the downward trend in bank counts over the last several decades, as evidenced in the FDIC data. Therefore, FinCEN used a total bank count of 4,780.[289]

4. *Credit unions:* There are 4,853 federally insured credit unions as of June 30, 2022.[290] FinCEN did not apply a growth factor to these entities because of the downward trend in credit union counts over the last several decades, as evidenced in the NCUA data. Therefore, FinCEN used a total credit union count of 4,853.[291]

5. *Depository institution holding companies:* According to a report from the Federal Reserve, as of December 31, 2021, there are 3,546 bank holding companies and 10 savings and loan holding companies (6 insurance, 4 commercial).[292] FinCEN did not apply a growth factor to these entities because of the downward trend in depository institution holding company counts over the last several decades. Therefore, FinCEN used a total count of 3,556 (3,546 bank holding companies and 10 savings and loan holding companies).[293]

6. *Money services businesses:* According to the FinCEN Money Services Business (MSB) Registrant Search page, there are 23,622 registered MSBs as of July 8, 2022.[294] 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 will not be within the scope of the exemption since they are not registered with FinCEN. FinCEN's 2024 estimate is 26,957.

7. *Brokers or dealers in securities:* According to the SEC's Fiscal Year 2023 Congressional Budget Justification, the number of registered broker-dealers in fiscal year 2021 was 3,527.[295]

8. *Securities exchanges or clearing agencies:* According to the SEC's website, there are 24 registered national securities exchanges and 14 registered clearing agencies (includes Proposed Rule Change Filings and Advance Notice Filings), totaling 38 entities.[296] FinCEN's 2024 estimate is 43.

9. *Other Exchange Act registered entities:* According to an SEC proposed rule, there are two exclusive securities information processors.[297] The SEC's website shows that there is one national securities association, the Financial Industry Regulatory Authority.[298] According to data available on the SEC's website as of July 2022, there are 467 municipal advisors.[299] The SEC's website lists 10 nationally recognized statistical rating organizations.[300] The SEC granted two applications to register as security-based swap repositories.[301] According to prior SEC proposed collection notices, there are three approved OTC derivatives dealers as of 2019[302] and 373 registered transfer agents as of mid-2018.[303] According to data available on the SEC's website, there are 48 security-based swap dealers

[285] FinCEN did not project how many securities reporting issuers could decrease from 2022 to 2024 and therefore left the 2022 estimate unchanged.

[286] *See* U.S. Census Bureau, *Table 1. Government Units by State: Census Years 1942 to 2017* (last revised Oct. 8, 2021), available at *https://www.census.gov/data/tables/2017/econ/gus/2017-governments.html.*

[287] *See* Federal Deposit Insurance Corporation, *Details and Financials—Institution Directory,* available at *https://www7.fdic.gov/idasp/advSearchLanding.asp.*

[288] 85 FR 57129 (Sept. 15, 2020).

[289] FinCEN did not project how many banks could decrease from 2022 to 2024 and therefore left the 2022 estimate unchanged.

[290] *See* National Credit Union Administration, *Quarterly Credit Union Data Summary* (Q2, 2022), p. i, available *https://www.ncua.gov/files/publications/analysis/quarterly-data-summary-2022-Q2.pdf.*

[291] FinCEN did not project how many credit unions could decrease from 2022 to 2024 and therefore left the 2022 estimate unchanged.

[292] Federal Reserve Board of Governors, *Supervision and Regulation Report,* (May 2022), p. 18, available at *https://www.federalreserve.gov/publications/files/202205-supervision-and-regulation-report.pdf.*

[293] FinCEN did not project how many depository holding companies could decrease from 2021 to 2024 and therefore left the 2021 estimate unchanged.

[294] *See* Financial Crimes Enforcement Network, *MSB Registrant Search,* available at *https://www.fincen.gov/msb-registrant-search.*

[295] Securities and Exchange Commission, ''Fiscal Year 2023 Congressional Budget Justification,'' *https://www.sec.gov/files/fy-2023-congressional-budget-justification-annual-performance-plan_final.pdf,* p. 33. FinCEN did not project how many brokers or dealers in securities could decrease from 2022 to 2024 and therefore left the 2022 estimate unchanged.

[296] Securities and Exchange Commission, *Self-Regulatory Organization Rulemaking,* available at *https://www.sec.gov/rules/sro.shtml.*

[297] Securities and Exchange Commission, *Proposed Rule: Market Data Infrastructure,* 85 FR 16731 (Mar. 24, 2020).

[298] Securities and Exchange Commission, *Self-Regulatory Organization Rulemaking,* available at *https://www.sec.gov/rules/sro.shtml.*

[299] Securities and Exchange Commission, *Information about Registered Municipal Advisors* (July 2022), available at *https://www.sec.gov/help/foia-docs-muniadvisorshtm.html.*

[300] Securities and Exchange Commission, *Current NRSROs,* available at *https://www.sec.gov/ocr/ocr-current-nrsros.html.*

[301] Securities and Exchange Commission, *Security-Based Swap Data Repositories; ICE Trade Vault, LLC; Order Approving Application for Registration as a Security-Based Swap Data Repository* (June 16, 2021), available at *https://www.sec.gov/rules/other/2021/34-92189.pdf* and *Security-Based Swap Data Repositories; DTCC Data Repository (U.S.), LLC; Order Approving Application for Registration as a Security-Based Swap Data Repository* (May 7, 2021), available at *https://www.sec.gov/rules/other/2021/34-91798.pdf.*

[302] Securities and Exchange Commission, *Proposed Collection; Comment Request,* 84 FR 6450 (Feb. 27, 2019).

[303] Securities and Exchange Commission, *Proposed Collection; Comment Request,* 83 FR 47949 (Sept. 21, 2018).

as of July 13, 2022.[304] The total count of these entities is 906. FinCEN's 2024 estimate is 1,034.

10. *Investment companies or investment advisers:* According to information provided by SEC staff, there are 2,764 registered investment companies (number of trusts, not funds) and 14,739 registered investment advisers as of December 2021. This totals 17,503. FinCEN's 2024 estimate is 21,337.

11. *Venture capital fund advisers:* According to information provided by SEC staff, there are 1,776 exempt reporting advisers utilizing the exemption from registration as an adviser solely to one or more venture capital funds as of December 2021. FinCEN's 2024 estimate is 2,165.

12. *Insurance companies:* According to the Treasury Department's Federal Insurance Office's annual report on the insurance industry, there were 676 life and health insurers, 2,614 property and casualty insurers, and 1,260 health insurers licensed in the United States during 2020, totaling 4,550.[305] FinCEN's 2024 estimate is 5,925.

13. *State licensed insurance producers:* According to the National Association of Insurance Commissioners' website, as of October 14, 2021, there were more than 236,000 business entities licensed to provide insurance services in the United States.[306] FinCEN's 2024 estimate is 287,698.

14. *Commodity Exchange Act registered entities:* Counts related to the following entities are available on the Commodity Futures Trading Commission (CFTC) website: Designated Contract Market (16); Swap Execution Facility (19); Designated Clearing Organization (15); and Swap Data Repository, Provisionally-registered (4)—totaling 54.[307] Additionally, CFTC staff provided the following breakdown for the following companies as of August 31, 2022: Futures Commission Merchant (58); Introducing Broker in Commodities (995);Commodity Pool Operators (1,256); Commodity Trading Advisory (1,686); Retail Foreign Exchange Dealer (4); Swap Dealer, Provisionally-registered (107); and Major Swap Participant (0)—totaling 4,106. These totals combined equal 4,160. FinCEN's 2024 estimate is 4,747.

15. *Accounting firms:* FinCEN searched the Public Company Accounting Oversight Board's (PCAOB) Registered Firms list, accessible on their website, and identified 835 firms as of July 7, 2022.[308] 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.'' FinCEN's 2024 estimate is 953.

16. *Public utilities:* FinCEN relies upon the U.S. Census Bureau's 2019 Statistics of U.S. Businesses data for this estimate. FinCEN accessed the publicly available 2019 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 6,096.[309] SUSB data only include entities with paid employees at some time during the 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's 2024 estimate is 8,480.

17. *Financial market utilities:* According to the designated financial market utilities listed on the Federal Reserve's website, there are eight such entities.[310] While the website has not been updated since January 29, 2015, FinCEN understands this estimate is still applicable and that the number is unlikely to change by 2024. Therefore no growth factor is applied to this estimate.

18. *Pooled investment vehicles:* According to information provided by SEC staff, as of December 2021 there were 115,756 pooled investment vehicle clients reported by registered investment advisers. Of these, 6,438 are registered with a foreign financial regulatory authority. FinCEN subtracted these for a total of 109,318.[311] FinCEN's 2024 estimate is 133,265.

19. *Tax-exempt entities:* A commenter recommended that FinCEN rely on data that more accurately reflect the number of entities with federal tax-exempt status. FinCEN therefore relies on the 2021 Internal Revenue Service Data Book, which includes an annual count of tax-exempt organizations, nonexempt charitable trusts, nonexempt split-interest trusts, and section 527 political organizations for fiscal year 2021. This number is 1,980,571 as of September 30, 2021.[312] FinCEN's 2024 estimate is 2,414,437.

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 will have a related entity that falls under this exemption, totaling 603,609 in 2024.[313]

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.[314] FinCEN's 2024 estimate is 321,357.

22. *Subsidiaries of certain exempt entities:* In the NPRM, FinCEN referenced a commercial database provider that indicated there were 239,892 businesses in the U.S. that were ''majority-owned subsidiaries.'' As noted in the NPRM, this estimate was not refined further to consider only wholly-owned subsidiaries of *certain exempt entities.* During the review of additional data sources suggested by commenters, FinCEN identified that, per the *2020 ABS—Characteristics of Businesses* survey, 1.97 percent of employer respondents identified

[304] Securities and Exchange Commission, *List of Registered Security-Based Swap Dealers and Major Security-Based Swap Participants,* available at *https://www.sec.gov/tm/List-of-SBS-Dealers-and-Major-SBS-Participants.*

[305] U.S. Department of the Treasury Federal Insurance Office, *Annual Report on the Insurance Industry* (Sept. 2021), p. 5, available at *https://home.treasury.gov/system/files/311/FIO-2021-Annual-Report-Insurance-Industry.pdf.*

[306] National Association of Insurance Commissioners, *Producer Licensing* (last updated Oct. 14, 2021), available at *https://content.naic.org/cipr_topics/topic_producer_licensing.htm.*

[307] Data for each of the entities are available at the following respective CFTC websites. The numbers cited herein are as of July 11, 2022: *https://sirt.cftc.gov/SIRT/SIRT.aspx?Topic=Trading Organizations* (filtered by ''Designated''); *https://sirt.cftc.gov/SIRT/SIRT.aspx?Topic=SwapExecution Facilities* (filtered by ''Registered''); *https://sirt.cftc.gov/sirt/sirt.aspx?Topic=Clearing Organizations* (filtered by ''Registered''); and *https://sirt.cftc.gov/sirt/sirt.aspx?Topic=DataRepositories* (filtered by ''Pending—provisional registration'').

[308] *See* Public Company Accounting Oversight Board, *Registration, Annual and Special Reporting,* available at *https://rasr.pcaobus.org/Search/Search.aspx.*

[309] U.S. Census Bureau, *U.S. & states, 6-digit NAICS* (2019), available at *https://www.census.gov/data/tables/2019/econ/susb/2019-susb-annual.html.*

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

[311] This estimate may not account for foreign pooled investment vehicles advised by banks, credit unions, or broker-dealers.

[312] Internal Revenue Service, *Data Book, 2021* (May 2022), p. 30, available at *https://www.irs.gov/pub/irs-pdf/p55b.pdf.*

[313] $2,414,437 \times 0.25$.

[314] 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.

themselves as a ''business owned by a parent company, estate, trust, or other entity.'' [315] FinCEN applied this percentage to the 2024 total entity estimate of 36,581,506 to determine that there will be 720,656 wholly owned subsidiary entities in 2024. To calculate the subset of these entities that are wholly owned subsidiaries of *certain exempt entities,* FinCEN divided the number of exempt entities (not including the subsidiary exemption) by the 2024 total estimate to identify that around 10.93 percent are *certain exempt entities.* Finally, FinCEN applied this 10.78 percent of certain exempt entities to 720,656 wholly owned subsidiaries to calculate an estimated 77,752 *subsidiaries of certain exempt entities* in 2024.

23. *Inactive entities:* One commenter expressed concern that entities considered ''inactive'' in state registries may not be exempt from reporting obligations due to the lack of information to reliably estimate which and what percentage of administratively dissolved entities are, in fact, no longer actively engaged in business. FinCEN understands this concern and is not proposing an estimate for this exemption due to a lack of available data. FinCEN notes that administratively dissolved companies may not be included in the estimates from the IACA data.[316] If this is the case, there is no need to subtract such entities from the total entities estimate because they are not counted. However, there are likely to be some companies on corporate registries in the United States that fall under this exemption. If such companies were included in the 2021 IACA survey responses, it would impact FinCEN's estimates by *increasing* the total number of reporting companies. This means that FinCEN's estimate of reporting companies is potentially over-inclusive rather than under-inclusive, and therefore the total cost estimate would be less than what is estimated in this analysis.

FinCEN considered whether the exemption categories were likely to overlap, and therefore included counts of the same entities that would result in a duplicative subtraction. For example: A variety of entities, such as public utilities, securities reporting issuers, and brokers or 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.[317] Another scenario could be that the exemption estimates include entities that are not in the IACA data (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 amount 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.[318]

Given this analysis, FinCEN estimates that the total number of existing exempt entities as of 2024 is approximately 4,024,577. Subtracting this number from the estimate of 36,581,506 total existing entities as of 2024, FinCEN estimates that there are 32,556,929 entities that will meet the definition of a reporting company as of 2024, excluding exemptions. To estimate new exempt companies annually, FinCEN multiplied the estimate of new companies annually, 5,616,362, by the overall ratio of existing exempt entities to total existing entities from the calculations based on IACA data (4,024,577/36,581,506). The resulting estimate of new exempt entities is approximately 617,894. Therefore, FinCEN estimates that there will be 4,998,468 new entities per year that meet the definition of reporting company, excluding exemptions.

As discussed in the cost analysis, to estimate annual costs of the rule's requirements, FinCEN assumed a distribution of reporting companies' beneficial ownership structure complexity. The *2020 ABS—Characteristics of Businesses* survey provides the number of owners for employer firms and was identified as the best source for an estimated distribution of reporting companies' beneficial ownership structure because of its focus on U.S. entities.[319] The survey's data show that 58.96 percent of respondent employer firms were owned by a single person. Further, 95.09 percent of all respondents reported under 4 owners (*i.e.,* 58.96 percent of respondents indicated 1 owner plus 36.13 percent of respondents indicated 2 to 4 owners). The assumption that the majority of reporting companies will have a simple structure is further supported by the *Nonemployer Statistics: 2019 Table,* which shows that 87 percent of the approximately 27 million nonemployer firms were considered sole-proprietorships, which includes single-owner LLCs.[320]

For purposes of estimating total cost, FinCEN applied the following distribution based on the *2020 ABS—Characteristics of Businesses* survey data: 59 percent of reporting companies will have a ''simple structure'' (*i.e.,* one beneficial owner and the same person is the company applicant), 36.1 percent of reporting companies will have an ''intermediate structure'' (*i.e.,* four beneficial owners and one company applicant), and 4.9 percent of reporting companies will have a ''complex structure'' (*i.e.,* 8 beneficial owners and two company applicants).[321] The

[315] The 2022 ABS Survey instruction manual states that this response should be selected ''when one of these types of organizations acted as a single entity in owning all of the rights, claims, interests, or stock in this business in 2021.'' FinCEN understands this to mean that those entities that selected this response should be considered wholly owned subsidiaries for purposes of this estimate. *See* U.S. Census Bureau, *2022 Annual Business Survey (ABS) Instructions* (2022), p. 7, available at *https://www2.census.gov/programs-surveys/abs/information/ABS-2022-Instructions.pdf.*

[316] IACA's 2017 survey specified in its questions that entities be in good standing or active. FinCEN assumes that this same expectation applies to the 2021 survey, but recognizes that does not mean no such companies were included in the state statistics.

[317] In the NPRM, FinCEN listed an example of an overlap as insurance companies and state-licensed insurance producers. One commenter noted that such an overlap is highly unlikely to occur. FinCEN concurs with the commenter's statement and no longer cites this as example; however, other exemptions may still overlap.

[318] 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.

[319] In contrast, the NPRM included an estimated distribution of beneficial owners per report that relied upon UK entity data.

[320] Although the *Nonemployer Statistics: 2019 Table* had a higher percentage of likely simple structures for the purpose of a distribution, FinCEN elected to use the lower percentage to ensure a conservative final cost estimate.

[321] The U.S. Census Bureau's *2020 ABS—Characteristics of Businesses* data show that 58.96 percent of reporting employer firms had 1 owner. FinCEN used this percentage as a proxy to estimate the percentage of reporting companies with a simple structure. The ABS data show that 36.13 percent of reporting employer firms had 2 to 4 owners, and FinCEN used this percentage as a proxy to estimate the percentage of reporting companies with an intermediate structure. The ABS data show that 4.9 percent of reporting employer firms had either 5 to 10 owners (1.7 percent), 11 or more owners (0.63 percent), are ''business owned by a parent company, estate, trust, or other entity'' (1.97 percent), or have an unknown number of owners (0.62 percent). FinCEN used this percentage as a proxy to estimate the percentage of reporting companies with a complex structure. The distribution used by FinCEN is based on a consolidated version of this distribution, simplified for ease of the analysis. *See* U.S. Census Bureau,

estimated distribution and number of reported persons is summarized in Table 1.

reported persons is summarized in Table 1.

Table 1 – Estimated Distribution of Reporting Companies and Persons Reported

Distribution	Beneficial Owners	Non-Beneficial Owner Company Applicants
0.59	1	0
0.361	4	1
0.049	8	2

Costs of Initial Report Determination and Filing

FinCEN assumes that each reporting company will file one initial BOI report. Given the implementation period of one year to comply with the rule for entities that were created 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 will submit their initial BOI reports in Year 1, totaling 32,556,929 reports. While new reporting companies may be created during this year as well, FinCEN notes that some existing companies will dissolve and not file within the first year, though FinCEN does not account for dissolutions in the analysis. Additionally, FinCEN applied a 6.83 percent growth factor each year since the date of the underlying source (2020) through 2024 (*i.e.,* Year 1 of the rule) that would account for the creation of new entities until the implementation of the rule. In Year 2 and thereafter, FinCEN estimates that the number of new initial BOI reports will be fixed at 4,998,468, which is the same estimate as the number of new entities per year that meet the definition of reporting company in 2024.[322] Such entities will have 30 days to file an initial report.

In response to comments to the NPRM, FinCEN includes herein a detailed discussion of the steps related to the filing of an initial BOI report and the related time burden and cost of each step. The PRA analysis in the NPRM proposed the following activity and average time burden breakdown for initial BOI reports:

- 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;
- 70 minutes in total.

A few commenters stated that this estimate was too short and proposed additional activities that should be considered as part of the cost of filing an initial BOI report. Commenters also proposed that different levels of employees, and subsequently differing wage levels, will participate in the process and should be accounted for in the burden. Commenters pointed to the penalty provisions as incentives to consult with professionals prior to filing. Further, the rule requires that those filing BOI reports on behalf of the reporting company certify that the report is true, correct, and complete, which may increase the time burden associated with the filing requirement. FinCEN considers these points and adjusts the time burden estimate accordingly.

Considering the comments and the rule, it is apparent that the burden and costs associated with filing initial BOI reports will vary depending on the complexity of the reporting company's structure. FinCEN contends, as stated in the NPRM, that for some reporting companies this will be a minimal burden because the structure of the reporting company will be simple.[323] For example, an LLC could have one beneficial owner, who self-registered the entity and is therefore the company applicant. The same person filing the initial BOI report would, with minimal burden, be able to fill out the report using their own personal information that is readily available to them. However, entities with more complex structures will have an increased level of burden associated with applying the rule to the company's structure and collecting identifying information from multiple people. For example, a corporation could have four beneficial owners with ownership interests, four beneficial owners with substantial control (consider a corporation with a CEO, CFO, COO, and general counsel, each of which do not hold 25 percent or greater ownership interests), and two company applicants (consider a law firm partner who controlled the filing of incorporation documents, and a person at the law firm who filed the documents). An employee of the corporation may file the report to FinCEN, with the CEO's review, and may analyze how the rule will apply to the company's structure, identify who needs to be reported, and coordinate the collection of identifying information from the nine required people. These two examples of simple versus complex structures result in very different burden estimates.

FinCEN assumed in the NPRM that all reporting companies would be small businesses, in part due to the fact that large operating companies are exempt. However, FinCEN acknowledges that a small business may not always have a simple reporting structure for purposes of this requirement. FinCEN therefore estimates a range of burden and costs associated with filing an initial BOI report to account for the likely variance among reporting companies. The lower bound of the range assumes a reporting company with a simple structure and

2020 Annual Business Survey (ABS)—Characteristics of Businesses, last updated Oct. 26, 2021, available at *https://www.census.gov/data/tables/2020/econ/abs/2020-abs-characteristics-of-businesses.html.*

[322] For analysis purposes, FinCEN assumes that the number of new entities per year from years 2 through 10 will be the same as the 2024 new entity estimate, which accounts for a growth factor of 13.1 percent per year from the date of the underlying source (2020) through 2024. Annually thereafter, FinCEN assumes no change in the number of new entities. FinCEN provides an alternative cost analysis in the conclusion section where the 13.1 percent growth factor continues throughout the entire 10-year time horizon of the analysis (*i.e.,* through 2033). However, this growth factor is possibly an overestimate given that it is a based on a relatively narrow timeframe of data (two years).

[323] One commenter ''disagreed vehemently'' with this assertion.

one individual to report where this same individual also fills out the BOI form. The upper bound of the range assumes a reporting company with a complex structure and ten individuals to report, in which multiple employees and persons may be involved in the filing activities. Including this consideration in the cost of filing initial BOI reports departs from the NPRM, in which the number of beneficial owners per report was considered in the analysis of updated BOI reports only.

A commenter argued that 15–25 beneficial owners could be required to be reported per company given the proposed definition. FinCEN believes that, given the types of entities that fall under the reporting company definition, such a high number of reported individuals would be an outlier scenario. FinCEN does not intend for the upper bound selected here to imply it is the maximum number of such persons that may be reported; there could indeed be reports with over 8 beneficial owners, and the rule does not put a cap on the number of beneficial owners to be reported. However, FinCEN believes those structures are rare and only a small subset of the entire population of reporting companies. This assumption is supported by the available data sources used to derive the distribution of reporting companies' beneficial ownership structures. Specifically, a strong majority of over 95 percent of reporting employer firms in the *2020 ABS—Characteristics of Businesses* survey stated they had less than four owners and 87 percent of nonemployer firms in the *Nonemployer Statistics: 2019 Table* were considered sole proprietorships, which included single-owner LLCs.

This assumption is also supported by available data from the Federal Reserve Banks' *Small Business Credit Survey (SBCS)* regarding the ways in which small businesses obtain financial services.[324] The SBCS data for both employer and nonemployer based small businesses indicate that very few of the surveyed entities obtain financing through ''other'' means, such as through farm-lending institutions, friends or family or the owner, nonprofit organizations, private investors, and government entities.[325] According to data from recent years, at most 5 percent of surveyed firms in a given year obtained financing through other means.[326] These findings hold regardless of number of employees for employer firms and for revenues of both employer and nonemployer firms. Because most small surveyed businesses do not seek financial services through non-traditional routes, FinCEN believes this supports the assumption that reporting companies will have a simple beneficial ownership structure from a financial stakeholders' perspective. Therefore, FinCEN believes the selected range is appropriate in estimating an average overall burden for the requirement. FinCEN uses a lower and upper bound estimate for each burden activity associated with filing initial BOI reports. FinCEN then estimates an average of these two scenarios to account for intermediately structured entities, assumed to have four beneficial owners and one company applicant.

The first step to complete a BOI report remains to read the form and understand the requirement, with slight amendments to account for reading other documents in addition to the form and analyzing the definition of reporting company. FinCEN takes the point raised by a commenter that some reporting companies may, as part of this activity, read the final rule. Given the length of the final rule, FinCEN concurs that in those instances it will take an individual longer than 30 minutes to complete this step. FinCEN anticipates issuing guidance documents to assist with this step that FinCEN estimates will lessen the burden associated with understanding the requirement. The commenter also stated that determining whether the entity is a reporting company and having another individual consider this conclusion and concur will also add time to this activity.[327] FinCEN assumes that the time reporting companies spend on this step will vary based on the complexity of their structure. While all companies will need to read the form and understand the requirement, more complexly organized entities are more likely to closely read the final rule, conduct an analysis of whether they are a reporting company, and request secondary review of this determination. Therefore, FinCEN estimates a range between 40 and 300 minutes (40 minutes to 5 hours) for this step. The lower bound is double the estimate in the NPRM. FinCEN believes this increase is appropriate given the points raised by the commenter about the time to review the final rule and/or FinCEN guidance documents, in addition to the form, and to analyze whether an entity is a reporting company. The upper bound is a half-hour higher than the timeframe proposed by the commenter; FinCEN believes 5 hours is an appropriate upper bound to account for the length of the final rule and review of future guidance documents.

The second step to complete a BOI report was slightly amended from the description in the NPRM. In addition to identifying and collecting information about beneficial owners and the company applicant, this information must also be *reviewed.* This amendment reflects a commenter's suggestion that the review of collected information should be accounted for, a detail which FinCEN agrees should be explicitly stated. Again, FinCEN assumes that the time reporting companies spend on this step will vary based on their structure. For a reporting company with a simple structure, where the person who completed the first step is the owner, this individual will already understand that the requirement only applies to their own information, and therefore will only need to collect the required information about themselves and their company, all of which should be readily available. FinCEN also anticipates issuing guidance documents to assist in simplifying such a determination for such entities. The rule does not require existing entities to identify a company applicant, which will lessen the burden of this activity for many reporting companies. In a more complex reporting company structure, multiple people may need to analyze who will meet the definition of beneficial owner and company applicant for their company and coordinate with these persons to collect their information for the BOI report. This scenario will be more burdensome; one commenter proposed 3 hours to determine beneficial ownership. Therefore, FinCEN estimates a range of 30 to 240 minutes (0.5 to 4

[324] *See* Federal Reserve Banks, *Small Business Credit Survey 2022 Report on Employer Firms* (May 2022), available at *https://www.fedsmallbusiness.org/survey/2022/report-on-employer-firms* and *Small Business Credit Survey 2021 Report on Nonemployer Firms* (2021), available at *https://www.fedsmallbusiness.org/survey/2021/report-on-nonemployer-firms.* The data is accessible on both sites through a ''download data'' link.

[325] The other response options in the survey to the question of the primary source of financial services for these firms were: alternative financial source, community development financial institution (CDFI), credit union, finance company, financial services company, fintech lender, larger bank, and small bank. The definitions of the options, including ''other'', may be found in the data's ''Definitions'' sheet.

[326] According to the 2021 SBCS employer firms data, 1 percent of firms obtained financial services from other means. According to the 2020 SBCS nonemployer firms data, 5 percent of firms obtained financial services from other means. These responses may be found in the data's ''Employer firms'' and ''Nonemployer firms'' sheets, respectively.

[327] The commenter also specified which role in a company may perform such activities; FinCEN considers these points in its discussion of the hourly wage estimate.

hours) to perform this step. The lower bound estimate is consistent with the estimate in the NPRM, while the upper bound incorporates the 3 hour estimate proposed by a commenter to identify beneficial owners, with an additional hour to account for collection and review of information from beneficial owners and company applicants.

The third step to complete a BOI report is to fill out and file the report. This step will require attaching an image of an acceptable identifying document for each beneficial owner and company applicant. FinCEN believes that the mechanics of filling out the report, including uploading attachments, will remain a relatively minor burden activity. This is partly because the other steps already account for understanding the form and collecting the necessary information. One comment noted that FinCEN did not account for acquiring, installing, and utilizing technology and systems to make this filing. The filing method will be accessible via the internet and will not require any additional acquisition or installation of technology by reporting companies, as FinCEN assumes that such technology is accessible to reporting companies. FinCEN believes that the time burden estimated in this step accounts for utilizing this technology to make this filing. The time burden to fill out the report may vary depending on the number of persons included. Therefore, FinCEN estimates a range of 20 to 110 minutes for this step. The lower bound estimate is consistent with the estimate in the NPRM, and assumes that it will take 20 minutes to fill out the report with information about the reporting company and one person. To estimate the upper bound, FinCEN assumed 10 additional minutes each to fill out the report for 9 additional persons (totaling 10 persons), resulting in 110 minutes.

Commenters raised other costs associated with filing initial BOI reports outside of these steps. The most frequently raised other cost was the need for reporting companies to hire professional expertise to assist in these steps, which was a point FinCEN specifically requested comment on in the NPRM.[328] The NPRM did not include the cost of hiring professionals in its cost estimate, but noted that FinCEN is aware that some reporting companies may seek legal or other professional advice in complying with the BOI requirements.

Given the comments received on this topic, FinCEN adds an estimate for professional expertise to the cost of initial BOI reports. FinCEN again assesses that a range is most appropriate for estimating this cost, as some entities may not consult professionals and therefore not incur this cost. As stated in the NPRM, FinCEN intends that the reporting requirement will be accessible to the personnel of reporting companies who will need to comply with these regulations and will not require specific professional skills or expertise to prepare the report. However, FinCEN concurs with comments that it is likely that some reporting companies will hire or consult professional experts. FinCEN also assesses that this likelihood increases for more complex reporting company structures.[329]

Commenters provided perspectives on the amount of time and hourly rate to consider for hiring professional expertise, which most commenters identified as lawyers or accountants. One commenter provided an estimate of 2 hours and another commenter provided an estimated range of 3–5 hours. FinCEN is adopting the high end of this range proposed by the second commenter of 5 hours. The hourly estimate takes into account the time for professional review of the entity's ownership and control structure and communications with the reporting company to ensure accurate understanding and filing of the report.

A commenter recommended a per hour rate estimate of $400, which was based on a recent SEC PRA analysis.[330] FinCEN generally agrees with the commenter's reasoning and therefore has adopted this estimate as part of the estimated range of cost associated with this requirement. However, FinCEN notes that this upper bound estimate potentially overestimates the cost to retain professional expertise, as the preparation and filing of reports with the SEC generally requires specialized knowledge of securities regulation. Although the completion of the BOI report is a new requirement for professionals such as lawyers and accountants to become familiar with, FinCEN does not view the content of the report to be as specialized. While $400 an hour may be an overestimation of the cost of professional services, FinCEN is incorporating it as an upper bound estimate given the feedback from commenters.

As reflected in Table 2, the total dollar estimate of the upper bound range of the cost of professional expertise is $2,000, which is based on the estimated 5 hours at an hourly rate of $400 per hour to complete an initial BOI report. FinCEN anticipates that this per reporting company upper bound cost will decrease over time for new reporting companies as professionals become familiarized with the rule and thus more efficient and effective in helping clients comply with the rule.

In the NPRM, the hourly wage rate estimated for each reporting requirement was an average cost of $27.07 per hour, the mean hourly wage for all employees from the U.S. Bureau of Labor Statistics' (BLS) May 2020 National Occupational Employment and Wage Estimates report. The foregoing rate was then multiplied by a private industry benefits factor of 1.42 [331] to estimate a fully loaded wage rate of $38.44 per hour. Commenters were critical of FinCEN's selection of the ''all employees'' [332] wage estimate used to calculate hourly wage rates, and expressed that such estimates were far less than what may reasonably be expected. Specifically, commenters criticized FinCEN's notion that ordinary employees, with no specialized knowledge or training, would be capable of filing the initial reports. Multiple commenters expressed that reporting companies will rely on, at least in part, managers and corporate officers to submit initial filings. FinCEN finds this argument persuasive and has amended estimated wage and fully loaded wage rates to reflect this.

FinCEN has increased the estimated base wage rate of $27.07 to approximately $39.97 per hour.[333] This

[328] FinCEN sought 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. *See* 86 FR 69953 (Dec. 8, 2021). One comment stated that FinCEN's question to commenters in the NPRM on this topic is ''off the mark'' for any entities that are not businesses at all, as many entities engage in no interstate commerce, and that the question fails to refer to large businesses that do not fit within the exemptions.

[329] It may also be the case that such reporting companies with a more complex structure have in-house professional expertise that may assist with the requirements.

[330] Securities and Exchange Commission, *Holding Foreign Companies Accountable Act Disclosure Release No. 34–93701* (Dec. 2, 2021), p. 56, available at *https://www.sec.gov/rules/final/2021/34-93701.pdf.*

[331] The ratio between benefits and wages for private industry workers is $11.42 (hourly benefits)/$27.19 (hourly wages) = 0.42, as of March 2022. The benefit factor is 1 plus the benefit/wages ratio, or 1.42. *See* U.S. Bureau of Labor Statistics, *Employer Costs for Employee Compensation: Private industry dataset,* (March 2022), available at *https://www.bls.gov/web/ecec/ecec-private-dataset.xlsx.*

[332] The proposed rule selected an ''all employees'' estimate to reflect FinCEN's goal to develop the BOI reporting requirement so that a range of businesses' ordinary employees, with no specialized knowledge or training may file reports.

[333] FinCEN assumes that the fully loaded hourly wage estimate calculated in this analysis is the average internal hourly cost to entities to comply

Continued

updated estimate derives from the BLS May 2021 Wage Estimates [334] and represents the average reported hourly wage rates of three major occupational groups assessed to be most likely responsible for executing filings on behalf of reporting companies: management; business and financial operations; and office and administrative support. The management group was included to account for feedback from commenters that senior officers and other management roles are likely to be involved in the filing activities, such as reviewing the form before it is filed. FinCEN concurs with this point from commenters and has therefore updated the wage estimate to account for such occupations.[335] Additionally, FinCEN assesses it is appropriate to include the occupational groups for business and financial operations and office and administrative support to account for a mix of specialized employees within a reporting company that may assist in the filing. FinCEN assesses that such employees are likely to include business or financial operations specialists that assist with conducting the reporting company's regulatory requirements, or office and administrative employees that assist with the reporting company's paperwork and other administrative tasks.

FinCEN reviewed and considered whether all major occupational groups should be included in this wage estimate. In particular, FinCEN considered whether legal occupations should be included. However, FinCEN accounts for the cost of legal (and other professional) expertise in an additional cost, a range of $0 to 2,000 per reporting company. FinCEN believes that this is a better way to account for the cost of legal expertise for this filing requirement because it reflects the billable rate that reporting companies are likely to pay for such services, rather than the profession's hourly wage rate,[336] and therefore more accurately estimate the cost to the reporting company. Regarding the other major occupational groups,[337] FinCEN acknowledges that individuals from such occupations may file BOI reports, given that entities in such industries may be reporting companies. However, the other occupational groups are not likely to be involved in the filing of a BOI report by virtue of their occupation, as opposed to the three groups that were selected.[338] As stated in the NPRM, those filing BOI reports on reporting companies' behalves could work across all industries (thus the reliance on the ''all employees'' wage estimate). However, FinCEN proposes a more specific approach here, based on the type of labor likely to be involved in the report filing according to NPRM comments.

The calculated average hourly wage of the above-mentioned three occupation groups is $39.97.[339] Multiplying the foregoing estimated hourly wage rate by the private industry benefits factor of 1.42 [340] [341] produces a fully loaded hourly wage rate of approximately $56.76. The wage rate is applied to all reporting companies, regardless of the estimated beneficial ownership structure, in order to reflect that the role of the individual filing in all scenarios could include a mix of managerial, specialized, and administrative individuals.

The following table shows the estimated cost of filing initial BOI reports per reporting company, which FinCEN estimates to be a range of $85.14–2,614.87 per reporting company.

with the rule. However, FinCEN recognizes that in practice, there is heterogeneity across entities for a number of reasons including but not limited to number and expertise of employees, and the geographical location, profitability, and age of the entity.

[334] *See* U.S. Bureau of Labor Statistics, *National Occupational Employment and Wage Estimates United States* (May 2021), available at *https://www.bls.gov/oes/current/oes_nat.htm.*

[335] The wage rate that FinCEN included in the NPRM for ''all employees'' did include management occupations as part of this rate. However, by narrowing the occupational groups in the final RIA, FinCEN's analysis gives more weight to the role managers (and other specific occupational groups) will have in the reporting requirement. FinCEN believes this change is appropriate given the feedback received from commenters on the wage estimate.

[336] FinCEN's estimate assumes a $400 per hour rate for such expertise. As a point of comparison, the BLS mean hourly wage for the legal occupational group is $54.38.

[337] The other major occupational groups are the following: computer and mathematical; architecture and engineering; life, physical, and social science; community and social service; educational instruction and library; arts, design, entertainment, sports, and media; healthcare practitioners and technical; healthcare support; protective services; food preparation and serving related; building and grounds cleaning and maintenance; personal care and service; sales and related; farming, fishing, and forestry; construction and extraction; installation, maintenance, and repair; production; transportation and material moving. *See* U.S. Bureau of Labor Statistics, *National Occupational Employment and Wage Estimates United States* (May 2021), available at *https://www.bls.gov/oes/current/oes_nat.htm.*

[338] For example, a healthcare worker at a medical office is unlikely to be involved in the filing of the office's BOI report unless that healthcare worker is also the senior officer (or owner) of the office.

[339] FinCEN recognizes that in practice, the hourly wage will vary across reporting companies for a number of factors including, but not limited to, number and expertise of employees, and the geographical location, profitability, and age of the entity. FinCEN considered using an average of the lowest 10th percentile and then of the highest 90th percentile of these three wage categories, as provided by the BLS, rather than the $39.97 used for this analysis. This resulted in an hourly wage rate of $18.42 at the 10th percentile and $46.41 at the 90th percentile of the wage distribution. However, FinCEN chose to use an average of the 50th percentile (mean) wage rate of $39.97 due to a lack of data on the likely underlying wage distribution across reporting companies.

[340] The ratio between benefits and wages for private industry workers is $11.42 (hourly benefits)/$27.19 (hourly wages) = 0.42, as of March 2022. The benefit factor is 1 plus the benefit/wages ratio, or 1.42. *See* U.S. Bureau of Labor Statistics, *Employer Cost for Employee Compensation: Private industry dataset,* March 2022, available at *https://www.bls.gov/web/ecec/ecec-private-dataset.xlsx.*

[341] The NPRM included a sensitivity analysis of selecting a higher benefits factor of 2 based on 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. *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.* FinCEN did not apply this alternative in the RIA because no comments regarding the benefits factor were received and because FinCEN is concerned about the applicability of this benefits factor in this rulemaking. The benefits factor included herein applies broadly to private industry workers, rather than only those related to health and human services, which is more appropriate given the affected public for this rule.

Table 2 – Burden and cost of initial BOI reports per reporting company

Description	Simple Structure	Intermediate Structure	Complex Structure
Read FinCEN BOI documents, understand requirement, and analyze reporting company definition	40 minutes	170 minutes	300 minutes
Identify, collect, and review information about beneficial owners and company applicants	30 minutes	135 minutes	240 minutes
Fill out and file report	20 minutes	65 minutes	110 minutes
Total time burden to file:	90 minutes	370 minutes	650 minutes
Avg. wage rate to file (in dollars)	$56.76	$56.76	$56.76
Professional expertise cost (in dollars)	$0	$1,000	$2,000
Cost per initial report:	**$85.14**	**$1,350.00**	**$2,614.87**

In assessing the total cost of initial BOI reports in Year 1, FinCEN applies the distribution summarized in Table 1, which assumes that for reporting purposes, 59 percent of reporting companies have a simple structure, 36.1 percent have an intermediate structure, and 4.9 percent have a complex structure. The range of total costs in Year 1, assuming for the lower bound that all reporting companies are simple structure and assuming for the upper bound that all reporting companies are complex structures is $2.8 billion–$85.1 billion. Applying the distribution of reporting companies' structure, FinCEN calculates total costs in Year 1 of initial BOI reports to be $21.7 billion. In Year 2 and onwards, in which FinCEN assumes that initial BOI reports will be filed by newly created entities, the range of total costs is $425.6 million–$13.1 billion annually. Applying the reporting companies' structure distribution, the estimated total cost of initial BOI reports annually in Year 2 and onwards is $3.3 billion.

FinCEN considered a commenter's statement that exempt entities will incur costs of undergoing the first step of the initial BOI reporting burden, which is to read FinCEN BOI documents, understand the requirement, and analyze the reporting company definition in order to initially confirm and understand their exempt status. FinCEN estimates that this will mostly be a *de minimis* cost for exempt entities. Such entities will likely only review the exemption category that applies to them, understand the exemption status, and not undergo further analysis. FinCEN agrees that some exempt entities may incur more substantive additional costs in understanding their exemption status, including time burden to read the final rule and guidance documents, analyze their entity's structure in relation to the exemptions, and possibly consult with professional experts. However, FinCEN believes such costs will apply to only a small portion of exempt entities. Further, the costs associated with this analysis will only be applicable initially and once the entity understands its applicability to a particular exemption, the cost associated with this analysis will be *de minimis* over time. In some cases, such ongoing analysis could be more costly. For example, an entity that just meets the criteria for the large operating company exemption because the company has 21 full-time employees may engage in regular analysis to ensure that the entity continues to meet the exemption (*i.e.,* in the event the employee count lowers to 19 for more than 30 days). FinCEN asserts that such scenarios will not apply broadly to the exempt entity populations.

The rule also includes specific special reporting rules. The foreign pooled investment vehicle 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 report that provides identification information of an individual that exercises substantial control over the pooled investment vehicle. In contrast to the NPRM, FinCEN is including the burden of such reports as part of the estimate of the burden for BOI reports. In the NPRM, FinCEN assessed that such initial reports would result in 40 minutes of burden (30 minutes less than the NPRM's estimate for filing initial BOI reports) in part due to the requirement that only one beneficial owner be identified. However, the updated approach to the burden estimate of filing initial BOI reports considers additional burden activities that foreign pooled investment vehicles may undertake and accounts for a low end range of one beneficial owner to report. Therefore, FinCEN assumes that the burden for initial BOI reports will be applicable to such entities, and a separate burden estimate is not calculated.

Finally, some of the special reporting rules may lessen the burden of initial report filings. The special rule for reporting companies owned by exempt entities requires such reporting companies to report the exempt entities' name, which will lessen the burden. Another special reporting rule states that existing entities do not need to report company applicant information. FinCEN does not separately calculate how much burden may be lessened by such special rules, although FinCEN considers what the cost of reporting company applicants for existing entities would have been in an alternative scenario.

Costs of Updated BOI Reports and Other Ongoing Costs

The rule requires that updated BOI be reported to FinCEN within 30 calendar days after the date on which there is any change with respect to any information previously submitted to FinCEN concerning the reporting company or the beneficial owners of the reporting company. This includes 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.[342] In order to estimate the costs of updated BOI reports, FinCEN first estimated the number of updated reports a reporting company will likely file in a year and then considered the associated costs with the updated report requirement.[343] Commenters suggested FinCEN provide more clarity and a more accurate estimation as to the ongoing costs to small businesses.

FinCEN first estimates the number of updated reports per month based on the probability of the most likely triggers for an update occurring. FinCEN's assessment indicates that the three most likely triggers for updates to BOI reports are: (1) change in address of a beneficial owner or company applicant; (2) death of a beneficial owner; or (3) a management decision resulting in a change in beneficial owner. 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 assessed that these changes will occur at a relatively minor rate compared to the three most likely triggers.

Commenters included examples of other triggering events. For example, one commenter noted that although a renewed driver's license may not include a changed identification number, the image of the driver's license would change and an update would therefore be required. However, as noted in Section III.B.v. above, a change in the details of a document's image that do not relate to a change in information to be reported in 31 CFR 1010.380(b)(1)(ii)(A–D) on the identification document will not trigger a requirement to update the image. FinCEN assesses that the rate at which such a number would change is not significant. For example, license renewal cycles vary state to state, which range from 2–4 years (Vermont)[344] to 12 years (Arizona).[345] Given that the renewal cycles are many years in length, updates would be infrequent. Similarly, the U.S. passport renewal cycle is generally 10 years. Given the infrequency of this update, FinCEN believes that providing an updated passport number and image of the same would not be considered a ''most likely trigger.'' FinCEN notes that the coverage of convertible instruments under the beneficial owner definition would result in updates, but FinCEN believes such events are captured in the estimate of a likelihood of a management decision resulting in a change in beneficial ownership.

No commenters proposed alternative ''most likely trigger events'' in order to estimate the number of updated reports. Therefore, FinCEN retains the ''most likely trigger events'' from the NPRM, with updates for more recent data sources and changes accounting for the final rule's elimination of the requirement to update information for company applicants. FinCEN also retains its assumption that updated reports stating that a previous reporting company is now eligible for an exemption would be negligible burden and has not separately estimated the number of reports that result from such a change. Updates are also required by the rule when a minor child that is a beneficial owner reaches the age of majority; similarly, updated reports based on such an event are not separately estimated.

To estimate the likelihood of the following, and thus updated BOI reports on a monthly basis (given that the rule requires updates within 30 calendar days), FinCEN approximated probabilities for these causes from other sources:

1. *Change in address of a beneficial owner:* According to the Census Bureau's Geographic Mobility data, 27,059,000 people one year or older moved from 2020–2021.[346] This is approximately 8.16 percent of the 2021 U.S. population.[347] Therefore, FinCEN assesses that 8.16 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.[348] FinCEN expanded the range of ages to 18 to 90[349] and calculated the median probability of death for males (0.0070) and females (0.0042). FinCEN then averaged these numbers, resulting in a 0.56 percent probability of death within a year.[350]

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. As in the NPRM, FinCEN assumes that 10 percent of beneficial owners may change within a year due to management decisions.[351]

Totaling these estimated probabilities, there is an approximately 19 percent probability of a change for a given beneficial owner resulting in an updated BOI filing within a year.[352] FinCEN divided this by 12 to find the monthly probability of an update: 1.56 percent.

In the NRPM, FinCEN relied on data published in the UK in a 2019 study on their BOI reporting requirements and applied a distribution of the estimated number of beneficial owners per report to estimate the number of updated reports per year. FinCEN declines to rely on that data in the RIA, and instead utilizes the reporting company structure distribution in Table 1, applied to initial reports. This ensures that the RIA is consistent and also that the underlying data source is based on trends in U.S., rather than UK, entities. This distribution assumes that 59 percent of

[342] 31 CFR 1010.380(a)(2).

[343] The NPRM included a summary of information received from DC Department of Consumer and Regulatory Affairs. *See* 86 FR 69961 (Dec, 8, 2021).

[344] *See* Vermont Department of Motor Vehicles, *Application for License/Permit,* p. 3, available at *https://dmv.vermont.gov/sites/dmv/files/documents/VL-021-License_Application.pdf.*

[345] *See* Arizona Department of Transportation, *License Information FAQs,* available at *https://azdot.gov/motor-vehicles/faq-motor-vehicle-division/driver-services-faq/license-information-faq.*

[346] *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: 2020–2021—United States,* available at *https://www.census.gov/data/tables/2021/demo/geographic-mobility/cps-2021.html.* The total movers, in thousands, is 27,059.

[347] The U.S. population on July 7, 2021 was 332,861,350 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: $(27{,}059{,}000/331{,}893{,}745) \times 100 = 8.16$.

[348] *See* Social Security Administration, *Actuarial Life Table, Period Life Table, 2019* (2022) available at *https://www.ssa.gov/oact/STATS/table4c6.html.*

[349] FinCEN used this age range due to the special rule for minor children whereby the information of a parent or guardian may be reported in lieu of information of a minor child. 31 CFR 1010.380(d)(3)(i). This is a slight departure from the NPRM, which used the age range of 30 to 90.

[350] The rule states that an updated report will be required upon the settlement of a beneficial owner's estate upon death. Therefore, the timing of the updated report will not necessarily coincide with the timing of death, but the probability is still applicable for estimation purposes.

[351] FinCEN did not receive comments stating that this assumption is incorrect, or comments that provided sources to use for such an estimate.

[352] 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* (Mar. 2019), p. 16, available at *https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/822823/review-implementation-psc-register.pdf.*

reporting companies have 1 beneficial owner; 36.1 percent have 4 beneficial owners; and 4.9 percent have 8 beneficial owners.[353]

FinCEN utilized the same methodology as used in the NPRM to calculate the number of updated reports. To estimate Year 1 updated reports, FinCEN assumed that 1/12 of the initial reports that must be filed by reporting companies in existence on the effective date of the 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 − 0.0.0156)^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.[354] This assumes that changes for a beneficial owner would be independent from changes for other beneficial owners of the same company. Table 3 provides the estimated number of updated reports for the second month of implementation using the described methodology:

Table 3—Estimated Number of Beneficial Ownership Updated Reports in Year 1, Month 2

Beneficial owners	Distribution	Number of updated reports
1	0.59	24,973[355]
4	0.361	59,705[356]
8	0.049	15,714[357]
Total:		100,392[358]

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 6,578,732 updated reports. Estimated monthly updated reports for all subsequent months were calculated using the same equation, but based off of all initial reports instead of a portion of them. This estimate is multiplied by 12 for an annual estimate of 14,456,452 updated reports.

In the NPRM, FinCEN estimated the number of updates to company applicant information on a monthly basis. The final rule does not require updates to company applicant information to be reported, therefore FinCEN has purposely left such an estimate out of the RIA. FinCEN discusses the cost of such a requirement in an alternative scenario.

Having estimated the number of updated BOI reports, FinCEN estimates the cost of those reports. The PRA analysis in the NPRM proposed the following activity and average time burden breakdown for updated BOI reports:

- 20 minutes to identify and collect information about beneficial owners or applicants;
- 10 minutes to fill out and file the update;
- 30 minutes in total.

Given the discussion of burden related to initial BOI reports, and given the comments received, FinCEN changed this time estimate and provided a range based on beneficial ownership structure, as set out in Table 4.

Consistent with the NPRM, FinCEN did not provide a time estimate for reading the form, understanding the requirements, and analyzing the definition of reporting company during the updated report process. These tasks will have already been performed as part of the completion of an initial BOI report and therefore are not necessary at this stage, as the reporting company will already understand the requirements and definition of reporting company. The only tasks required will be identifying, collecting, and reviewing any updated information and then filling out and filing the updated report.

The first step to complete an updated BOI report was slightly amended from that in the NPRM in two aspects. First, consistent with the amendment to completing this second step for an initial BOI report, in addition to identifying and collecting information about beneficial owners, this information must also be *reviewed.* Second, updates to company applicant information will not be included in the step, as such updates are no longer required. The time estimate to identify, collect, and review information about beneficial owners for reporting companies with simple structures remains 20 minutes as was estimated in the NPRM. This time estimate is 10 minutes less for updated reports than it is for this step in initial reports because the initial analysis to identify beneficial owners is not required. Similar to simply structured entities, complex entities will not need to analyze the

[353] FinCEN estimates 4 individuals for reporting companies with intermediate structures and 8 individuals for reporting companies with complex structures (as opposed to 5 and 10 individuals in the example for initial BOI reports) as updated information for company applications is not required.

[354] 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)^2, etc.

[355] 0.59 × (32,556,929 × (1/12)) × (1 − (1 − 0.0156)) = 24,973.

[356] 0.361 × (32, 56,929 × (1/12)) × (1 − (1 − 0.0156)^4) = 59,705.

[357] 0.049 × (32,556,929 × (1/12)) × (1 − (1 − 0.0156)^8) = 15,714.

[358] 24,973 + 59,705 + 15,714 = 100,392.

definition of beneficial owner. FinCEN therefore estimates an hour (60 minutes) for such entities to complete this step.[359] This estimate is consistent with the statement in the initial BOI reports section that it will take an hour for such entities to collect and review beneficial ownership information.

The second step to complete an updated BOI report is to fill out and file the report. Consistent with filling out and filing initial BOI reports, this step will require attaching an image of an acceptable identifying document for each beneficial owner and company applicant. FinCEN increased the estimate for this step to align with the time estimate range of 20 to 110 minutes for filling out and filing initial BOI reports. The lower bound estimate is slightly higher than the estimate in the NPRM because it takes into account the expected functionality of the BOSS, which requires reporting companies to resubmit all information required in the report, not only the information that has changed. Reporting companies will have the option (though not a requirement) to save a PDF prior to submission of their BOI report to be used as a reference for future filings, which may lessen the burden for this step if companies reference the PDF to expedite re-populating any beneficial ownership information that has not changed.

FinCEN adopted the fully loaded wage rate of $56.76 to the cost estimate for updated BOI reports, which is reflected in Table 4. Finally, to align with the initial BOI report cost estimate, FinCEN added a range of estimated costs for professional expertise to complete updated BOI reports. FinCEN provides a range of $0 to $400, which reflects an estimate of zero hours to 1 hour at a rate of $400 per hour. This is consistent with the hourly rate for professional expertise set out above for initial BOI reports. The upper bound estimate of $400 is lower than that for initial BOI reports because FinCEN assesses that professionals will most likely only be engaged in the event of a restructuring or refinancing of the reporting company and not when merely the information of a beneficial owner has changed. The updated report cost range is $37.84–560.81 per report.

Table 4 – Burden and cost of updated BOI reports per reporting company

Description	Simple Structure	Intermediate Structure	Complex Structure
Identify, collect, and review information about beneficial owners	20	40	60
Fill out and file report	20	65	110
Total time burden to file (in minutes):	40	105	170
Avg. wage rate to file (in dollars)	$56.76	$ 56.76	$56.76
Professional expertise cost (in dollars)	0	$200.00	$400
Cost per updated report:	**$37.84**	$ 299.33	**$560.81**

In assessing the total cost of updated BOI reports in Year 1, FinCEN applies the distribution discussed above which assumes that for reporting purposes, 59 percent of reporting companies are a simple structure, 36.1 percent are an intermediate structure, and 4.9 percent are a complex structure. The range of total costs in Year 1, assuming for the lower bound that all reporting companies are simple structure and assuming for the upper bound that all reporting companies are complex structures, is $249 million–$3.7 billion. Applying the distribution of reporting companies' structure, FinCEN calculates total costs in Year 1 of updated BOI reports to be $1 billion. In Year 2 and thereafter, the range of total costs is $547 million–$8.1 billion annually. Applying the reporting companies' structure distribution, the estimated total cost of updated BOI reports annually in Year 2 and thereafter is $2.3 billion.

The rule also requires that corrected reports be filed within 30 calendar days after the date on which a reporting company becomes aware or has reason to know that reported information is inaccurate. FinCEN does not separately calculate the burden and costs of submitting a corrected report after inaccurate information was initially reported because FinCEN does not know how many corrections will need to be submitted in any given year. However, FinCEN acknowledges that filing corrected reports may result in reporting companies undertaking some of the burden activities required for initial and updated BOI reports, such as reaching out to obtain and review information and filing the report. However, FinCEN assesses that such activities may be less burdensome during the correction process, depending on the type of corrections being made to the report. For example, a correction to the spelling of a beneficial owner's name will likely result in minimal burden. However, a correction to the identity of a beneficial owner could result in more burden.

Commenters requested that FinCEN provide more clarity on the ongoing costs to small businesses. One such ongoing cost may be monitoring for updated information. Commenters noted that reporting companies would bear a cost in monitoring for changes, such as in undertaking a monthly or recurring review, or checking with their beneficial owners to ensure that no reported information has changed. Reporting companies may also consider on a recurring basis whether or not they meet an exemption, given the requirement to submit an updated report if an entity becomes exempt. FinCEN anticipates such costs to be minimal. Based on the probabilities for

[359] FinCEN acknowledges that when a reporting company goes through a significant restructuring or refinancing, the time required to identify, collect, and review information about beneficial owners may be more than this estimate. However, FinCEN expects this subset of reporting companies per year to be small relative to the total number of reporting companies that need to submit updated reports in a given year. Additionally, FinCEN believes such costs are likely accounted for in the professional expertise estimate included in Table 4.

the three most likely triggers for an updated report, there is a 1.56 percent anticipated change to a beneficial owner's information in a given month. FinCEN acknowledges that the amount of time a reporting company spends monitoring for updates is dependent upon the number of beneficial owners in its report. Based on this, a reporting company with a simple structure and one beneficial owner would spend less time monitoring each month than a reporting company with a complex structure and multiple beneficial owners. Considering both FinCEN's assumption that 59 percent of affected reporting companies will have simple structures and the estimated low probability of changes each month, FinCEN does not think the amount of time needed to perform this monitoring is significant for companies with either one or many beneficial owners.

Another ongoing cost that commenters stated should be considered in the RIA is the cost of securing data collected for BOI reports, including images of identification documents, as well as the harms should such information not be kept secure. FinCEN anticipates that considerations regarding FinCEN's storage of the data will be discussed in the future rulemaking regarding access to BOI. FinCEN concurs with commenters that the theft of such data would result in substantial harms and costs. U.S. government resources are available to small businesses concerned about data security, which FinCEN expects is a concern for such businesses regardless of this requirement.[360] FinCEN acknowledges that this requirement could heighten such concern and may result in potentially significant costs to businesses for securing the data and in increased identity theft risk to individuals in the event of a data breach, but does not have estimates for these costs.

Cost of FinCEN Identifiers

The rule would require the collection of information from individuals and reporting companies in order to issue them a FinCEN identifier. This is a voluntary collection. The individuals and reporting companies will provide the same information required pursuant to BOI reports in order to obtain a FinCEN identifier, and will be subject to the same update and correction requirements for such information.

The affected parties of this collection would overlap somewhat with parties required to submit BOI reports, given that reporting companies may request FinCEN identifiers. For individuals requesting FinCEN identifiers, FinCEN acknowledges that anyone who meets the statutory criteria could apply for a FinCEN identifier under the rule. However, the primary incentives for individual beneficial owners to apply for a FinCEN identifier are likely data security (an individual may see less risk in submitting personal identifiable information to FinCEN directly and exclusively than doing so indirectly through one or more individuals at one or more reporting companies) and administrative efficiency (when an individual is likely to be identified as a beneficial owner of numerous reporting companies). Company applicants that are responsible for many reporting companies may have 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.

Given these incentives, which FinCEN acknowledges are based on assumptions, FinCEN believes 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 32.6 million reporting companies in Year 1 and 1 percent of 5 million new reporting companies each year thereafter. 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 did receive comments discussing utility of the FinCEN identifier, but did not receive specific comments suggesting an alternative methodology or source from which to estimate the number of individuals that may apply for one.

FinCEN assumes that, similar to reporting companies' initial filings, there will be an initial influx of applications for a FinCEN identifier that will 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.

Consistent with the NPRM, FinCEN anticipates that initial FinCEN identifier applications for individuals will require approximately 20 minutes (10 minutes to read the application instructions 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 will be readily available to the person requesting the FinCEN identifier. FinCEN does not account for the burden of understanding the BOI reporting requirements in the FinCEN identifier application process, as FinCEN assumes that burden will be accounted for in the broader process of a reporting company assessing its BOI reporting obligations, which will presumably involve communication with beneficial owners about requirements and options. FinCEN adjusted the wage rate to align with the wage rate of $56.76 per hour estimated in the cost analysis. This is an increase from the wage rate estimated in the NPRM, but reflects an incorporation of commenters' suggestions regarding the wage estimate for those with filing requirements. FinCEN assesses that the same wage rate will be applicable for FinCEN identifier requests for individuals because individuals submitting such requests are likely to be individuals with filing requirements.[361] The estimated cost per application is therefore $18.92. 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.

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 0.0068 (8.16 percent, the annual likelihood of a change in address, divided by 12 to identify a monthly rate), as this was the sole probability of those previously estimated that would result in a change

[360] *See* Small Business Administration, *Strengthen your cybersecurity,* available at *https://www.sba.gov/business-guide/manage-your-business/stay-safe-cybersecurity-threats.*

[361] FinCEN assumes that beneficial owners, some of which are also company applicants, will file the majority of BOI reports. FinCEN also assesses that employees of reporting companies may also be involved in the filing process, depending on the complexity of the company's structure. FinCEN believes that the same individuals are likely to request FinCEN identifiers and therefore uses the same reporting company hourly wage rate from earlier in the analysis. FinCEN acknowledges that other company applicants, such as those in the legal profession, are also likely to request FinCEN identifiers although such professions are not included in this wage estimate. However, given that the specifics of who will utilize FinCEN identifiers is unknown at this time, FinCEN uses the same hourly wage rate for purposes of this analysis.

to an individual's identifying information. This analysis estimated 12,180 updates in Year 1 and 26,575 annually thereafter. As in the NPRM, FinCEN estimates that updates would require 10 minutes (10 minutes to fill out and file the update). The estimated cost per application is therefore $9.46. The total cost of FinCEN identifier applications for individuals in Year 1 is estimated to be $115,219 and $251,386 annually thereafter.

FinCEN did not estimate the number of reporting companies that will obtain a FinCEN identifier in the NPRM because FinCEN assumed this would be part of the process and cost already estimated for BOI reports. A commenter noted that FinCEN did not account for this cost. However, the mechanism for reporting companies to obtain a FinCEN identifier will be to either check a box on its initial BOI report or submit an updated BOI report with the box checked. Therefore, FinCEN again assumes that the cost of reporting companies obtaining FinCEN identifiers is included in the BOI report cost estimates. Additionally, reporting companies will update FinCEN identifier information through a submission of a BOI report; therefore, the burden associated with such updates is already estimated. The final rule does not adopt proposed 31 CFR 1010.380(b)(5)(ii)(B) regarding use of FinCEN identifiers for entities. FinCEN is continuing to consider this issue and intends to address it before the effective date. Accordingly, FinCEN has reserved 31 CFR 1010.380(b)(5)(ii)(B) in this final rule.

Individuals providing FinCEN identifiers to reporting companies in lieu of BOI for subsequent reporting to FinCEN will reduce burdens on reporting companies. In such cases, reporting companies will only have to report a beneficial owner's FinCEN identifier, as opposed to the associated BOI of that beneficial owner, and the beneficial owner (not the reporting company) would be responsible for keeping their information current with FinCEN. FinCEN has not estimated a reduction in BOI reporting burden based on the use of FinCEN identifiers at this time, but expects that this could be incorporated in future burden estimates based on the use of FinCEN identifiers.

2. Costs to FinCEN

Administering the regulation would entail costs to FinCEN. Such costs include IT development and ongoing annual maintenance to securely collect, process, store, and make available electronic submissions of BOI data. FinCEN's cost estimates for development and annual maintenance are $72 million and $25.6 million, respectively, to meet the minimum system capabilities required by the rule, which includes capabilities related to the collection of images. While FinCEN expects that it will be able to leverage some existing BSA components, the feedback received throughout the rulemaking process has made clear that the BOSS architecture will be complex to design, build, and maintain. For example, the system of record (or database) for the beneficial ownership data will need to be segregated from the existing BSA system of record, and there will need to be another system of record to store the FinCEN identifier information. There will also need to be a separate user application with individual authentication requirements to perform work necessary to administer the FinCEN identifier. System engineering efforts have occurred simultaneously with the rulemaking process, which has involved significant input from various stakeholder groups with various access and disclosure requirements. This input has made clear to FinCEN that the user access and authentication will be complicated to design and develop.

For purposes of total cost analysis in this RIA, FinCEN applies FinCEN's development costs of $72 million in Year 1 of the rule and IT maintenance costs of $25.6 million annually thereafter.

FinCEN will incur additional costs, besides those estimated, in order to ensure successful implementation of and compliance with the BOI reporting requirements. These include personnel to support CTA implementation, draft regulations, conduct regulatory impact analyses and stakeholder outreach, conduct audits and inspections, adjudicate requests for BOI, provide training on the requirements, publish documents such as guidance and FAQs, and conduct outreach to and answer inquiries from the public. FinCEN estimates that there will be personnel costs of approximately $10 million associated with the rule in Fiscal Year 2023, with continuing recurring costs of roughly the same magnitude for ongoing implementation, outreach and enforcement each year thereafter.

Therefore, for purposes of total cost analysis in this RIA, total costs to FinCEN are $82 million in Year 1 and $35.6 million annually thereafter.

3. Costs to Other Government Agencies

As stated in the NPRM, the rule does not impose direct costs on state, local, and Tribal governments. However, based on comments received to both the ANPRM and NPRM,[362] such authorities anticipate incurring indirect costs in connection with the implementation of the rule. Comments to the NPRM included possible indirect costs to such authorities, including costs associated with providing information to the public and responding to questions regarding compliance. Specifically, commenters proposed that such authorities would be responsible for mailing a notice of the reporting requirement to companies, identifying reporting companies that should receive such notice, or changing existing forms to include notification of the requirement. Both the NPRM and its comments noted that state authorities may also incur indirect costs associated with fielding of calls or questions from the public regarding the reporting requirements. One cost estimate provided by comments was $1.34 million to a state authority for notifying and responding to inquiries from entities related to the rule.

FinCEN anticipates incurring its own costs directly to mitigate such expenditures by states and other authorities. The NPRM stated that FinCEN will work closely with state, local, and Tribal governments to ensure effective outreach strategies for implementation of the final rule. Additionally, FinCEN has a call center (the Regulatory Support Section) which will receive incoming inquiries relating to the CTA and its implementation. FinCEN will also provide guidance materials to state, local, and Tribal governments for their use and distribution in response to questions, which will minimize those governments' need to develop their own guidance materials at their own cost. FinCEN will also work closely with state, local, and Tribal authorities to identify cost-effective ways to notify affected parties of potentially applicable requirements. FinCEN appreciates the suggestions in comments on how to minimize burden to state, local, and Tribal authorities, and intends to do so in implementing the rule; therefore, the RIA does not include a separate cost estimate for indirect costs to state, local, or Tribal authorities related to the reporting requirement.

In addition, there may be costs to other federal agencies that will enforce compliance with the regulation. For example, FinCEN may expend resources identifying noncompliant persons and, after identifying noncompliance, FinCEN may investigate, initiate

[362] ANPRM comments were summarized in the NPRM. *See* 86 FR 69954–69955 (Dec. 8, 2021). NPRM comments are summarized in this document.

outreach to the entity, work with law enforcement in related investigations, or initiate a compliance or enforcement action. FinCEN's enforcement of the BOI reporting requirements will also involve coordination with law enforcement agencies. These law enforcement agencies may also incur costs (time and resources) while conducting investigations into noncompliance. FinCEN anticipates that costs to law enforcement agencies that have access to the BOI data will be assessed in the BOI access regulations, and therefore is not estimating them here.

4. Other Cost Considerations

FinCEN is not aware of disproportionate budgetary effects of this 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. As stated in the NPRM, the wide-reaching scope of the reporting company definition means that the rule will 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 exemptions to the reporting company definition may in practice result in segments of the private sector not being affected by the rule; thereby causing those that are affected to be disproportionately so compared to exempt entities.

A commenter stated that the reporting requirements will have a disproportionate adverse effect on underserved communities that do not have access to professional expertise to understand the requirements. FinCEN notes that efforts have been made to minimize burdens on these and other segments of the regulated community. FinCEN will evaluate this issue further as it receives feedback from stakeholders after reporting requirements take effect.

FinCEN does not have accurate estimates that are reasonably feasible regarding the effect of the rule on productivity, economic growth, full employment, creation of productive jobs, and international competitiveness of U.S. goods and services.

f. Qualitative Discussion of Benefits

As previously noted, there are several potential, interrelated benefits associated with this rule, including improved and more efficient investigations by law enforcement, and assistance to other authorized users in a variety of activities. This, in turn, may strengthen national security, enhance financial system transparency and integrity, and align U.S. corporate transparency requirements with international financial standards.

As noted in the NPRM, the U.S. 2018 National Money Laundering Risk Assessment (2018 NMLRA) estimated that domestic financial crime, excluding tax evasion, generates approximately $300 billion of proceeds for potential laundering annually, which is consistent with the United Nations Office on Drugs and Crime (UNODC) range that places criminal activity between 2 and 5 percent of global GDP.[363] 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 some legitimate business proceeds to commingle with illicit earnings. The 2022 NMLRA notes that professional money laundering organizations and corruption networks, for example, leverage such front companies.[364]

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,[365] but entities are frequently used in money laundering schemes and provide a layer of anonymity to the natural persons involved in such transactions.[366] The deliberate misuse of legal entities, including limited liability companies and other corporate vehicles, trusts, partnerships, and the use of nominees continue to be significant tools for facilitating money laundering and other illicit financial activity in the U.S. financial system.[367]

Identifying the owners of these entities is a crucial step to all parties that investigate money laundering. The 2022 NMLRA notes that determining the true ownership of these structures requires time-consuming and resource-intensive processes by law enforcement when conducting financial investigations.[368] However, there is currently no systematic way to obtain information on the beneficial owners of entities in the United States. The misuse of legal entities, both within the United States and abroad, remains a major money laundering vulnerability in the U.S. financial system.[369] Within the United States, criminals have historically been able to take advantage of the lack of uniform laws and regulations pertaining to the disclosure of information detailing an entity's beneficial ownership. This has stemmed mainly from the different levels of information and transparency required by states at the time of a legal entity's registration.[370]

The benefits outlined in the NPRM's RIA continue to apply to the final rule. The rule will help address the lack of BOI critical for money laundering investigations. Improved visibility into the identities of the individuals who own or control entities will 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 will likewise benefit from the use of these data. The BOI database will 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

[363] 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.* The U.S. 2022 National Money Laundering Risk Assessment (2022 NMLRA) did not include an estimate of the annual domestic financial crime proceeds generated for potential money laundering. *See* U.S. Department of the Treasury, *National Money Laundering Risk Assessment* (2022), available at *https://home.treasury.gov/system/files/136/2022-National-Money-Laundering-Risk-Assessment.pdf.*

[364] 2022 NMLRA, pp. 21, 26.

[365] The NPRM noted that trade-based money laundering is one example of a scheme that uses legal entities, and noted that the Government Accountability Office's 2020 report on trade-based money laundering stated 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.*

[366] Please see the discussion of this topic in the Background section of the preamble and the NPRM, which describe 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.

[367] 2022 NMLRA, p. 1.

[368] *Id.,* p. 35.

[369] *Id.,* pp. 35–36.

[370] *Id.,* p. 36.

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 become more effective, money laundering in the United States will become more difficult. Making any method of money laundering more difficult in the U.S. will 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.[371] 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 rule will promote a more transparent, and consequently more secure, economy. Some comments to the NPRM generally supported the goal of increased corporate transparency. The NPRM's RIA noted that financial institutions with authorized access to such data would have key data points available for their customer due diligence processes, which may decrease customer due diligence and other compliance burdens. The 2016 CDD Rule also promotes transparency in ownership structures of legal entities, and thereby strengthens the U.S. economy and national security. However, the rule will build upon and improve the 2016 CDD Rule's 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. Moreover, the rule will require reporting of the BOI to a centralized database and such BOI will be made available to authorized users. The rule will also apply to a broader range of entities, since the 2016 CDD Rule covers only those institutions subject to financial institution customer due diligence requirements (*e.g.,* those with accounts at such institutions). Further, unlike the 2016 CDD Rule, this rule does not limit the number reported of individuals in substantial control to one person, which provides law enforcement and other authorized users a much more complete picture of who makes important decisions at a reporting company. Comments to the NPRM emphasized that a decrease in customer due diligence burden would depend on the similarities between the BOI reporting requirements and the revised CDD rule; therefore, FinCEN expects that such an estimate will be addressed in the revised CDD rule.

FinCEN also expects increased transparency in ownership structures of entities to enhance 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 capitalize 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. The increased transparency in ownership structure of entities could also bolster the confidence and trust of reporting companies in other companies they do business with, and potentially encourage new business growth and economic development, as reporting companies could be fairly confident of the legitimacy of their new business relationships since their businesses partners will also likely be subject to this rule's reporting requirements.

Third, the BOI reporting requirements will have the benefit of aligning the United States with international AML/CFT standards, bolstering support for such standards and strengthening cooperation with international partners. The United States will also share BOI, subject to appropriate protocols consistent with the CTA, in transnational investigations, tax enforcement, and the identification of national and international security threats. Aligning with international AML/CFT standards will also strengthen the reputation of the United States as a global leader in combating money laundering and terrorist financing.

g. Present Value and Conclusions

The following table totals the burden and costs estimated in the prior sections. The totals for initial and updated BOI reports incorporate the distribution of reporting companies' beneficial ownership structures discussed in connection with Table 1 above. In addition, FinCEN calculated the average over the first five years of burden and costs associated with the rule (which only includes costs to the public, not costs to FinCEN). This five-year average is 53,309,290 burden hours and $9,032,327,614.77 in cost. As previously described, the rule also has significant benefits that currently are not quantifiable. The total estimated burden and costs associated with this rule is summarized in Table 5.

[371] 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.

Table 5—Total Burden and Costs

Year 1			
Activity	**Count of reports**	**Burden hours**	**Cost**
Initial BOI reports	32,556,929	118,572,335	$21,673,487,885.48
Updated BOI reports	6,578,732	7,657,096	$1,038,524,428.72
FinCEN identifier applications for individuals	325,569	108,523	$6,159,488.81
FinCEN identifiers updates for individuals	12,180	2,030	$115,218.68
FinCEN costs			$82,000,000.00
Totals	39,473,410	126,339,984[372]	**$22,800,287,021.69**[373]

Year 2+			
	Count of reports	**Burden hours**	**Cost**
Initial BOI reports	4,998,468	18,204,421	$3,327,532,419.21
Updated BOI reports	14,456,452	16,826,105	$2,282,108,290.77
FinCEN identifier applications for individuals	49,985	16,662	$945,666.84
FinCEN identifiers updates for individuals	26,575	4,429	$251,386.22
FinCEN costs			$35,600,000.00
Totals	19,531,480	35,051,617[374]	**$5,646,437,763.04**[375]

In addition, FinCEN calculated the present value of cost for a 10-year horizon at discount rates of seven and three percent,[376] totaling approximately $55.7 billion and $64.8 billion, respectively. FinCEN is selecting the time period of 10 years, a relatively short time period given that the requirement is permanent. This is because FinCEN cannot predict how the burden and costs of compliance may change after the requirement is widely adopted by reporting companies. For example, in the cost analysis it states that FinCEN anticipates the upper bound estimate of the cost of

[372] Regarding burden hours for BOI reports, companies with simple beneficial ownership structures account for an estimated 31,400,517 burden hours in Year 1 (((0.59 × 32,556,929) × (90 minutes/60 minutes)) + ((0.59 × 6,578,732 × (40 minutes/60 minutes))) = 31,400,517. Companies with intermediate beneficial ownership structures account for an estimated 76,633,264 burden hours in Year 1 (((0.361 × 32,556,929) × (370 minutes/60 minutes)) + ((0.361 × 6,578,732) × (105 minutes/60 minutes))) = 76,633,264. Companies with complex beneficial ownership structures account for an estimated 18,195,650 burden hours in Year 1 (((0.049 × 32,556,929) × (650/60)) + ((0.049 × 6,578,732 × (170 minutes/60 minutes))) = 18,195,650. 31,400,517 + 76,633,264 + 18,195,650 + 108,523 + 2,030 = 126,339,984.

[373] Regarding costs for BOI reports, companies with simple beneficial ownership structures account for an estimated $1,782,211,687.09 in Year 1 ((0.59 × 32,556,929) × 85.14)) + ((0.59 × 6,578,732) × 37.84) = $1,782,211,687.09. Companies with intermediate beneficial ownership structures account for an estimated $16,577,540,630.34 in Year 1 ((0.361 × 32,556,929) × 85.14)) + ((0.361 × 6,578,732) × 37.84) = $16,577,540,630.34. Companies with complex beneficial ownership structures account for an estimated $4,352,259,996.78 in Year 1 ((0.049 × 32,556,929) × 85.14)) + ((0.049 × 6,578,732) × 37.84) = $4,352,259,996.78. ($1,782,211,687.09 + $16,577,540,630.34 + $4,352,259,996.78 + $6,159,488.81 + $115,218.68 + $82,000,000= $22,800,287,021.69)

[374] Regarding burden hours for BOI reports, companies with simple beneficial ownership structures account for an estimated 10,109,849 burden hours in Years 2+ (((0.59 × 4,998,468) × (90 minutes/60 minutes)) + ((0.59 × 14,456,452) × (40 minutes/60 minutes))) = 10,109,849. Companies with intermediate beneficial ownership structures account for an estimated 20,260,286 burden hours in Years 2+ (((0.361 × 4,998,468) × (370 minutes/60 minutes)) + ((0.361 × 14,456,452 × (105/60))) = 20,260,286. Companies with complex beneficial ownership structures account for an estimated 4,660,391 burden hours in Years 2+ (((0.049 × 4,998,468) × (650 minutes/60 minutes)) + ((0.049 × 14,456,452) × (170/60))) = 4,660,391. 10,109,948 + 20,260,286 + 4,660,391 + 16,662 + 4,429 = 35,051,617.

[375] Regarding costs for BOI reports, companies with simple beneficial ownership structures account for $573,808,725.53 in estimated costs in Years 2+ ((0.59 × 4,998,468 × $85.14) + (0.59 × 14,456,452 × $37.84) = $573,808,725.53. Companies with intermediate beneficial ownership structures account for $3,998,123,986.98 in estimated costs in Years 2+ ((0.361 × 4,998,468 × $1,350) + (0.361 × 14,456,452 × $299.33) = $3,998,123,986.98. Companies with complex beneficial ownership structures account for $1,037,707,997.47 in estimated costs in Years 2+ ((0.049 × 4,998,468 × $2614.87 + (0.049 × 14,456,452 × $560.81)) = $1,037,707,997.47. ($574,808,725.53 + $3,998,123,986.98 + $1,037,707,997.47 + $945,666.84 + $251,386.22 + $35,600,000) = $5,646,437,763.04.

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

professional expertise will decrease over time as professionals become familiarized with the rule and thus more efficient and effective in helping clients comply with the rule. However, FinCEN is not able to predict such efficiencies at this time.

FinCEN calculated the cost over a 10-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 because the number of new entities each year are assumed to be the same for Years 2–10. However, FinCEN includes an alternative cost estimate in which FinCEN assumes that the rate of new entities created will grow at a rate of approximately 13.1 percent per year from 2020 through 2033.[377] This 13.1 percent growth is based on the calculated annualized growth factor in new entity creations in IACA's data from 2018 to 2020, and was incorporated to address NPRM comments that the assumption that growth and dissolution is likely to be equivalent throughout this time horizon may not be accurate. This results in a present value of cost for a 10-year horizon at discount rates of seven and three percent totaling approximately $84.1 billion and $102.6 billion, respectively.

The benefits of the rule are difficult to quantify, but the prior description of these benefits point to their significance. FinCEN's 2016 CDD Rule also did not quantify the benefits of collecting BOI, but rather included a breakeven analysis.[378] While the 2016 CDD Rule and this rule require submission of BOI under different circumstances and to different parties, the breakeven analysis of the 2016 CDD Rule suggests that even a small percentage reduction in money laundering activities as a result of this rule could result in economically significant net benefits. The U.S. 2018 NMLRA estimates that domestic financial crime, excluding tax evasion, generates approximately $300 billion of proceeds for potential laundering annually.[379] In that light, a rule that imposes undoubtedly significant costs of approximately $22.8 billion in the first year and $5.6 billion each year thereafter, is still, relatively modest in comparison to the magnitude of money laundering as a factor affecting the U.S. economy. While many of the rule's benefits are not currently quantifiable, FinCEN assesses that the rule will have a significant positive impact and that the benefits justify the costs. .

B. Final Regulatory Flexibility Act Analysis

When an agency issues a rule proposal, the Regulatory Flexibility Act (RFA) requires the agency to either provide an IRFA or, in lieu of preparing an analysis, to certify that the proposed rule is not expected to have a significant economic impact on a substantial number of small entities.[380] When FinCEN issued its NPRM, FinCEN believed that the proposed rule would have a significant economic impact on a substantial number of small entities, and provided an IRFA.[381] FinCEN received numerous comments related to the RIA, although only a couple specifically referenced the IRFA. Some of the comments related to the RIA were from small entities and associations representing small entities. FinCEN has discussed those comments relating to specific provisions in the proposed rule in Section III above, and those relating to the RIA in Section V.A. above.

The RFA requires each Final Regulatory Flexibility Analysis to contain:

- A succinct statement of the need for, and objectives of, the rule;
- A summary of the significant issues raised by the public comments in response to the IRFA, a summary of the assessment of the agency of such issues, and a statement of any changes made in the proposed rule as a result of such comments;
- A description of and an estimate of the number of small entities to which the proposed rule would apply;
- A description of the projected reporting, recordkeeping, and other compliance requirements of the proposed rule, including an estimate of the classes of small entities which will be subject to the requirement and the type of professional skills necessary for the preparation of the report or record; and
- A description of the steps the agency has taken to minimize the significant economic impact on small entities consistent with the stated objectives of applicable statutes, including a statement of the factual, policy, and legal reasons for selecting the alternative adopted in the final rule and why each one of the other significant alternatives to the rule considered by the agency which affect the impact on small entities was rejected.[382]

i. Statement of the Reasons For, and Objectives of, the 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.[383] 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 and 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 rule will 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 applicants of the reporting company, as required by the CTA.

ii. A Summary of the Significant Issues Raised by the Public Comments in Response to the IRFA, a Summary of the Assessment of the Agency of Such Issues, and a Statement of Any Changes Made in the Proposed Rule as a Result of Such Comments

FinCEN has carefully considered the comment letters received in response to the NPRM. Section III provides a general overview of the comments and discusses the significant issues raised by

[377] This is in contrast to the main analysis that assumes 13.1 percent growth in new entities from 2020 through 2024, and then a stable same number of 5 million new entities each year thereafter through 2033. Modifying this growth assumption to equal 13.1 percent growth in new formations in years 2024 through 2033 results in a new entity annual formation estimate of 5 million in the year of implementation of the reporting rule (2024), increasing to approximately 5.6 million by 2033.

[378] 81 FR 29444–29446 (May 11, 2016).

[379] 2018 NMLRA, p. 2. The U.S. 2022 NMLRA did not include an estimate of the annual domestic financial crime proceeds generated for potential money laundering. *See* 2022 NMLRA.

[380] 5 U.S.C. 601–612.

[381] 86 FR 69951–69954 (Dec. 8, 2021).

[382] 5 U.S.C. 604(a).

[383] CTA, Section 6402(5).

comments. In addition, Section V.A. includes a discussion of the comments received with respect to the preliminary RIA and IRFA, including those with respect to the estimated cost imposed on small businesses from the rule. FinCEN has considered the comments received from small entities and from associations representing them, regardless of whether or not the comments referred to the IRFA. Commenters expressed concern about the cost of the requirement on small businesses. FinCEN considered the burden and costs of the specific requirements throughout the final rule, and has adjusted the analysis appropriately.

Numerous commenters discussed whether or how FinCEN should use its statutory authority to add more exemptions to the definition of ''reporting company.'' FinCEN discusses in detail in the preamble the exemptions to the rule, which are statutorily mandated, and FinCEN's decision to not propose additional exemptions of entities at this time. Some commenters suggested that small businesses should be exempt from the reporting requirements. As noted in the NPRM, FinCEN believes that the definition of reporting company requires small businesses to report beneficial ownership information to FinCEN. Given FinCEN's assessment that all reporting companies are likely to be small entities, such an exemption could result in no entities being subject to the rule. FinCEN will continue to consider suggestions for additional exemptions, subject to the process required by the CTA, and consider regulatory and other implications associated with a given discretionary exemption.

A couple comments to the NPRM specifically referenced the IRFA. One commenter stated that the proposed rule is silent on FinCEN's efforts to minimize burden on small businesses, explaining that the IRFA completely ignores entire issues that are required under the 5 U.S.C. 603, and opining that the IRFA is materially defective.[384] Another commenter stated that FinCEN must complete an IRFA, although the commenter cited to the IRFA in the NPRM. In response to these comments, FinCEN notes that an IRFA was included in the NPRM.[385] An IRFA is required to include the following points, each of which is discussed in the NPRM's IRFA:

- A description of the reasons why action by the agency is being considered;[386]
- A succinct statement of the objectives of, and legal basis for, the proposed rule;[387]
- A description of and, where feasible, an estimate of the number of small entities to which the proposed rule will apply;[388]
- A description of the projected reporting, recordkeeping and other compliance requirements of the proposed rule, including an estimate of the classes of small entities which will be subject to the requirement and the type of professional skills necessary for preparation of the report or record;[389]
- An identification, to the extent practicable, of all relevant federal rules which may duplicate, overlap or conflict with the proposed rule;[390]
- A description of any significant alternatives to the proposed rule which accomplish the stated objectives of applicable statutes and which minimize any significant economic impact of the proposed rule on small entities.[391]

The other sections in this FRFA reference details from the IRFA when appropriate. In addition, more specific information regarding the estimated costs for small entities resulting from the final rule is set forth in Section V.B.v below, and other steps FinCEN has taken to minimize the economic impact of the rule on small entities are set forth in Section V.B.vi below.

iii. The Response of the Agency to a Comment Filed by the Chief Counsel for Advocacy of the Small Business Administration in Response to the Proposed Rule, and a Detailed Statement of Any Change Made to the Proposed Rule in the Final Rule as a Result of the Comment

The Chief Counsel for Advocacy of the Small Business Administration (''Advocacy'') filed a comment to the NPRM on February 4, 2022, that stated that Advocacy is concerned about the economic impact of the NPRM on small entities, and encourages FinCEN to implement less costly alternatives. Advocacy noted that FinCEN prepared an IRFA for the NPRM.

Specifically, Advocacy stated that FinCEN should allow for maximum flexibility in reporting timelines to mitigate the costs of the rule. Advocacy noted that the CTA permits for two years for existing entities to file initial reports and one year to file updated reports, while the proposed rule requires one year and 30 days, respectively. Additionally, Advocacy notes that the CTA permits a 90 day safe harbor for inaccurate reports, while the proposed rule requires corrected reports to be filed within 14 days of the date the person knew, or should have known, that the information was inaccurate, thus adding an additional deadline requirement. Advocacy encourages FinCEN to allow for the maximum flexibility allowed in the statute and extend the compliance requirements accordingly. Other commenters reiterated the points raised by Advocacy and requested that these timelines be extended to the statutory maximum.

FinCEN has retained the proposed rule's reporting timeline of one year, rather than two years, for existing entities' initial reports. FinCEN assesses, in an alternative scenario analysis included herein, that small businesses that are reporting companies would incur the same cost one year from the rule's effective date as they would two years from its effective date. Therefore, FinCEN assesses that the alternate timeline will have little impact on most existing reporting companies, with regard to the cost of filing the report. Additionally, FinCEN's effective date of January 1, 2024, will allow for a substantial outreach effort to notify small businesses about the requirement, and will give existing reporting companies time to understand the requirement prior to the one-year timeline. Importantly, as discussed in the alternative scenario, FinCEN believes that the one year reporting timeline is valuable to law enforcement and to other authorized users that require access to accurate and timely BOI, given the time-sensitive nature of investigations. As such, FinCEN has retained the timeline in the proposed rule.

FinCEN has also retained the proposed rule's reporting timeline for updated reports as 30 days, rather than one year. FinCEN includes an alternative scenario analysis that assumes a one year timeline. While FinCEN acknowledges a potential aggregate cost savings to the public, the bureau does not view the savings as offsetting the corresponding degradation to BOI database quality that would come with allowing reporting companies to wait a full year to update BOI with

[384] The comment referred to the ''IFRA'', but FinCEN assumes that the commenter is discussing the IRFA.

[385] 86 FR 69951–69954 (Dec. 8, 2021).

[386] *See* ''Statement of the Need for, and Objectives of, the Proposed Rule'' 86 FR 69951 (Dec. 8, 2021).

[387] *See* ''Statement of the Need for, and Objectives of, the Proposed Rule'' 86 FR 69951 (Dec. 8, 2021).

[388] *See* ''Small Entities Affected by the Proposed Rule'' 86 FR 69951–69952 (Dec. 8, 2021).

[389] *See* ''Compliance Requirements'' 86 FR 69952–69953 (Dec. 8, 2021).

[390] *See* ''Duplicative, Overlapping, or Conflicting Federal Rules'' 86 FR 69953 (Dec. 8, 2021).

[391] *See* ''Significant Alternatives that Reduce Burden on Small Entities'' 86 FR 69953–69954 (Dec. 8, 2021).

FinCEN. As noted in both the preamble to this rule and the NPRM, FinCEN considers keeping the database current and accurate as essential to keeping it highly useful, and that allowing reporting companies to wait to update beneficial ownership information for more than 30 days—or allowing them to report updates on only an annual basis—could cause a significant degradation in accuracy and usefulness of the database. While these risks are more difficult to quantify than cost estimates to reporting companies, these concerns justify the increased cost.

With respect to corrected reports, the final rule extends the filing deadline from 14 to 30 days in order to provide reporting companies with adequate time to obtain and report the correct information. The final rule reflects the concerns raised by commenters that the 14-day timeframe may not provide sufficient time for reporting companies to conduct adequate due diligence, consult with advisors, or conduct appropriate outreach, while at the same time providing a sufficiently short timeframe to ensure that errors are corrected quickly so that the database will remain accurate, complete, and highly useful.

Advocacy also encourages FinCEN to provide a clear and concise compliance guide that provides information about the requirements of the rule. Section 212 of the Small Business Regulatory Enforcement Fairness Act (SBREFA) requires agencies to provide a compliance guide for each rule (or related series of rules) that requires a final regulatory flexibility analysis.[392] Agencies are required to publish the guides with publication of the final rule, post them to websites, distribute them to industry contacts, and report annually to Congress.[393] Advocacy notes that the rule could cause confusion and anxiety as small businesses try to determine whether they need to comply and, if so, what they need to do to comply. Small businesses could expend time and other resources that they may not have while attempting to comply with the requirements of the rulemaking. Advocacy also points out that FinCEN acknowledges in its IRFA that small businesses may not have the funds to obtain an attorney or other type of professional to assist them in understanding the requirements of the rule.

FinCEN anticipates issuing a Small Entity Compliance Guide, pursuant to section 212 of SBREFA, in order to assist small entities in complying with these reporting requirements. In addition, FinCEN has also adjusted its regulatory impact analysis herein to account for the cost of small businesses hiring an attorney or other type of professional to assist in the reporting requirements; however, FinCEN maintains that not all reporting companies will incur this expense. FinCEN concurs with Advocacy that guidance about the reporting requirement will be critical in assisting small businesses in complying with the rule.

iv. Description and Estimate of the Number of Small Entities To Which the Rule Will Apply

To assess the number of small entities affected by the rule, FinCEN separately considered whether any small businesses, small organizations, or small governmental jurisdictions, as defined by the RFA, will be impacted. FinCEN concludes that a substantial number of small businesses will be significantly impacted by the rule, which is consistent with the IRFA.

In defining ''small business'', the RFA points to the definition of ''small business concern'' from the Small Business Act.[394] This small business definition is based on size standards (either average annual receipts or number of employees) matched to industries.[395] The rule will apply to ''reporting companies'' required to submit BOI reports to FinCEN. There are 23 types of entities that are exempt from submitting BOI reports to FinCEN, 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, apply to larger businesses. For example, the large operating company 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. Using the SBA's July 2022 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 $5 million in gross receipts/sales threshold in the rule's large operating company exemption (without considering whether entities in such industries would also meet the 20 employees portion of the exemption). 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 will be approximately 32.6 million existing reporting companies and 5 million new reporting companies formed each year.[396] FinCEN assumes that for purposes of estimating costs to small businesses, all reporting companies are small businesses. Such a general descriptive statement on the number of small businesses to which the rule will apply is specifically permitted under the RFA, when, as here, greater quantification is not practicable or reliable.[397] FinCEN has made this assumption in part to ensure that its FRFA does not underestimate the economic impact on small businesses.

[392] Small Business Regulatory Enforcement Fairness Act of 1996, Public Law 104–121, 212, 110 Stat. 857, 858 (1996).

[393] The Small Business and Work Opportunity Tax Act of 2007 added these additional requirements for agency compliance to SBREFA. *See* Small Business and Work Opportunity Tax Act of 2007, Public Law 110–28, 121 Stat. 190 (2007).

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

[395] *See* U.S. Small Business Administration, *Table of Small Business Size Standards Matched to North American Industry Classification System Codes* (July 14, 2022), available at *https://www.sba.gov/sites/default/files/2022-07/Table%20of%20Size%20Standards_Effective%20July%2014%202022_Final-508.pdf.*

[396] FinCEN estimated these numbers by relying upon the most recent available data, 2020, of the international business registers report survey administered by the International Association of Commercial Administrators in which multiple states 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, *2021 International Business Registers Report,* (2021), available at *https://www.iaca.org/ibrs-survey/.* 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 an average of the per capita ratio of the states to estimate a per capita average for the entire United States. FinCEN then multiplied this estimated 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 32.6 million reporting companies currently in existence and 5 million new reporting companies per year. To review this analysis, including all sources and numbers, please see the RIA.

[397] 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.

FinCEN requested comment in the NPRM on more precise ways to estimate the number of small businesses, and has discussed comments related to its entity estimates in the RIA.

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.[398] FinCEN assesses that the rule will not affect ''small organizations,'' as defined by the RFA because it 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. Therefore, any small organization, as defined by the RFA, will 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.[399] FinCEN assesses that the rule will not directly affect any ''small governmental jurisdictions,'' as defined by the RFA. The rule 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. Therefore, small governmental jurisdictions will be uniformly exempt from reporting pursuant to the rule. Certain small governmental jurisdictions may be among the state and local authorities that incur indirect costs as they address questions on the BOI reporting rule. However, FinCEN does not have adequate information to estimate these possible burdens on small governmental jurisdictions in particular, and did not receive comments regarding these burdens. FinCEN will take all possible measures to minimize the costs associated with questions from the public directed at state and local government agencies and offices.

v. Description of the Projected Reporting, Recordkeeping, and Other Compliance Requirements of the Rule, Including an Estimate of the Classes of Small Entities Which Will Be Subject to the Requirement and the Type of Professional Skills Necessary for the Preparation of the Report or Record

The rule imposes a new reporting requirement on certain entities, including small entities, to file with FinCEN reports that identify the entities' beneficial owners, and in certain cases their company applicants. The report must contain information about the entity itself. The reporting company must also certify that the report is true, correct, and complete. The rule also requires that reporting companies update the information in these reports as needed, and that incorrectly reported information be corrected, within specific timeframes.

Many comments received in response to the NRPM stated that FinCEN had underestimated or failed to estimate the burden to reporting companies resulting from the proposal in the following areas: (1) gathering relevant information for both initial and updated reports; and (2) hiring or utilizing compliance, legal, or other resources for expert advice on filing requirements. Additional comments were received in the ANPRM process that discussed potential costs related to these reporting requirements, and were summarized in the IRFA in the NPRM.[400]

FinCEN reviewed and incorporated commenter suggestions into the analysis. FinCEN has also incorporated changes into the final rule to lessen the burden of such compliance activities. For example, as explained in the preamble, the final rule harmonizes the reporting timeframes at 30 days for initial reports by newly created or registered entities, updated reports, and corrected reports. A number of commenters advocated for these harmonized timeframes to ease administration for reporting companies and service providers that may support reporting companies, which FinCEN has adopted. Additionally, the final rule removes the requirement that entities created before the effective date of the regulations report company applicant information. Newly created entities will still be required to report company applicant information, but they will not be required to update it. FinCEN believes that these changes will relieve unique and potentially substantial burdens on reporting companies associated with company applicant information. The final rule also clarifies the certification language to be consistent with other FinCEN certifications, which require a certification that the reported information is ''true, correct, and complete.'' FinCEN anticipates issuing a Small Entity Compliance Guide, pursuant to section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996, in order to assist small entities in complying with these reporting requirements.

FinCEN estimates that small businesses across multiple industries will be subject to these requirements. Therefore, FinCEN does not estimate what classes of small businesses would particularly be affected. FinCEN estimates 32.6 million domestic and foreign reporting companies will exist in 2024, and 5 million new reporting companies will be created each year thereafter. As discussed in connection with Table 1 above, for purposes of estimating costs, FinCEN applied a distribution of likely beneficial ownership structure of reporting companies: 59 percent will have a ''simple structure'', 36.1 percent will have an ''intermediate structure, and 4.9 percent will have a ''complex structure''. The data supporting this distribution is related to the number of owners reported in U.S. Census Bureau's *2020 Annual Business Survey.* FinCEN assumed for purposes of this analysis that simple structures will report one person on BOI reports; intermediate structures will report five people on BOI reports; and complex structures will report ten people on BOI reports.[401]

Assuming that all reporting companies are small businesses, the burden hours for filing BOI reports would be 126.3 million [402] in the first year of the reporting requirement (as existing small businesses come into compliance with the rule) and 35 million [403] in the years after. FinCEN estimates that the total cost of filing BOI reports is approximately $22.7

[398] 5 U.S.C. 601(4).

[399] 5 U.S.C. 601(5).

[400] *See* 86 FR 69952 (Dec. 8, 2021).

[401] *See* Table 1 in the RIA and preceding text for discussion regarding the distribution of reporting companies, including how this distribution was identified. Though additional data was available related to the revenue and gross receipts of certain types and sizes of entities, such as Census Bureau's Statistics of U.S. Businesses and Nonemployer Statistics, FinCEN chose to rely upon the indicator most relevant to the compliance cost of reporting beneficial owners (*i.e.,* the number of owners). This approach allowed FinCEN to provide a lower bound and upper bound estimate and a likely cost based on the number of beneficial owners without having to make further assumptions about how compliance costs might vary across entities based on number and expertise of employees or the industry, geographical location, profitability, or age of the entity. FinCEN believes it is appropriate to focus on number of beneficial owners because this is likely to directly affect how burdensome the requirement is for reporting companies. The RIA includes a discussion of the other Census Bureau sources and their applicability to FinCEN's analysis.

[402] 118.6 million hours to file initial BOI reports + 7.7 million hours to file updated BOI reports. Please see the RIA cost analysis section for the underlying analysis related to these burden hour estimates.

[403] 18.2 million hours to file initial BOI reports + 16.8 million hours to file updated BOI reports. Please see the RIA cost analysis section for the underlying analysis related to these burden hour estimates.

billion[404] in the first year and $5.6 billion[405] in the years after. FinCEN estimates it would cost the 32.6 million domestic and foreign reporting companies that are estimated to exist in 2024 approximately $85.14–2,614.87[406] each to prepare and submit an initial report for the first year that the BOI reporting requirements are in effect. These costs are summarized in Table 5—Total Burden and Cost. FinCEN estimates it would cost approximately $37.84–560.81 for entities to file updated BOI reports.[407]

The final rule provides an estimated range of the cost of professional expertise to the cost of both initial and updated BOI reports.[408] In the NPRM, FinCEN sought comment on whether small businesses anticipate requiring professional expertise to comply with the BOI requirements and what FinCEN could do to minimize the need for such expertise. The NPRM did not include the cost of hiring professionals in its cost estimate, but noted that FinCEN is aware that some reporting companies may seek legal or other professional advice in complying with the BOI requirements. Based on comments, professional expertise that will be sought out to comply with the reporting requirements are primarily lawyers and accountants. FinCEN has incorporated costs related to this expertise in its cost analysis.

vi. A Description of the Steps the Agency Has Taken To Minimize the Significant Economic Impact on Small Entities Consistent With the Stated Objectives of Applicable Statutes, Including a Statement of the Factual, Policy, and Legal Reasons for Selecting the Alternative Adopted in the Final Rule and Why Each One of the Other Significant Alternatives to the Rule Considered by the Agency Which Affect the Impact on the Small Entities Was Rejected

The steps FinCEN has taken to minimize the significant economic impact on small entities and the factual, policy, and legal reasons for selecting the final rule are described throughout the preamble. This section of the FRFA includes the alternative scenarios considered in the RIA, one of which would have increased the significant economic impact on small entities, and was thus rejected. FinCEN also explains in this section why other significant alternatives were not selected in the final rule.

The rule is statutorily mandated, and therefore FinCEN has limited ability to implement alternatives. However, FinCEN considered the following significant alternatives which affected the impact on small entities. The sources and analysis underlying the burden and cost estimates cited in these alternatives are explained in the RIA.

a. Reporting Timeline for Existing Entities

The CTA requires reporting companies already in existence when the final rule comes into effect to submit initial BOI reports to FinCEN ''in a timely manner, and not later than 2 years after'' that effective date.[409] In the NPRM, FinCEN proposed requiring existing reporting companies to submit initial reports within one year of the effective date, which is permissible given the CTA's two-year maximum timeframe. As noted in the NPRM, however, FinCEN considered giving existing reporting companies the entire two years to submit initial BOI reports as authorized by the statute, and compared the cost to the public under the one-year and two-year scenarios.

In both scenarios, the estimated cost per initial BOI report ranges from $85.14 to $2,614.87, depending on the complexity of a reporting company's beneficial ownership structure. That cost does not change depending on whether reporting companies have to incur it within one year or two years of the rule's effective date. If all 32,556,929 existing reporting companies have to incur it in the same single year, the aggregate cost to all existing reporting companies is approximately $21.7 billion for Year 1, after applying the beneficial ownership distribution assumption. FinCEN assumed that if the reporting deadline for existing reporting companies was two years from the final rule's effective date, then half of those entities would file their initial BOI report in the first year and the other half would file in the second, dividing that initial aggregate cost in half to produce average aggregate costs of approximately $10.8 billion in each year.[410]

According to FinCEN's analysis, requiring existing reporting companies to file initial BOI reports within two years of the rule's effective date instead of one results in a 10-year horizon present value at a three percent discount rate of approximately $60.3 billion instead of $64.8 billion—a difference of approximately $4.5 billion and a 10-year horizon present value at a seven percent discount rate of approximately $51.1 billion instead of $55.7 billion—a difference of approximately $4.6 billion. FinCEN assesses, however, that these long-term figures obscure the practical reality that having to incur the same cost one year from the rule's effective date instead of two years from its effective date will have little impact on most existing reporting companies. The cost is the same either way. Additionally, FinCEN's effective date of January 1, 2024, will allow for a substantial outreach effort to notify reporting companies about the requirement and give existing reporting companies time to understand the requirement prior to the one-year timeline. Because a year's difference for initial compliance does not change the per reporting company impact and because of the value to law enforcement and other authorized users of having access to accurate, timely BOI in the relatively near term, given the time-

[404] $21.7 billion to file initial BOI reports + $1 billion to file updated BOI reports. FinCEN estimated cost using a loaded wage rate of $56.76 per hour. Please see RIA cost analysis section for the underlying analysis related to these cost estimates.

[405] $3.3 billion to file initial BOI reports + $2.3 billion to file updated BOI reports. FinCEN estimated cost using a loaded wage rate of $56.76 per hour. Please see the RIA cost analysis section for the underlying analysis related to these cost estimates.

[406] *See* Table 2 in the RIA for details on this range and how the estimated time burden and cost of professional expertise is estimated to vary among reporting companies with simple, intermediate, and complex beneficial ownership structures.

[407] *See* Table 4 in the RIA for details on this range and how the estimated time burden and cost of professional expertise is estimated to vary among reporting companies with simple, intermediate, and complex beneficial ownership structures.

[408] As stated in the NPRM, FinCEN intends that the reporting requirement will be accessible to the personnel of reporting companies who will need to comply with these regulations and will not require specific professional skills or expertise to prepare the report. Therefore, the lower bound estimate for reporting companies with simple structures to complete initial and updated reports will be zero. In concurrence with comments that it is likely that some reporting companies will hire or consult professional experts, the upper bound estimate for reporting companies to engage professional expertise is $2,000 for initial BOI reports and $400 for updated BOI reports.

[409] 31 U.S.C. 5336(b)(1)(B).

[410] Changing the estimated number of initial reports in Year 1 and Year 2 has downstream effects on other estimates in the analysis. FinCEN assumes that the estimated number of FinCEN identifier applications tied to initial report filings (the number is estimated to be 1 percent of reporting companies) would similarly extend from a one-year to two-year period. Half of the initial FinCEN identifier applications, which FinCEN assumes are linked to persons with ties to existing reporting companies, would be filed in Year 1, and the other half in Year 2. FinCEN also assumed that updated reports and FinCEN identifier information would increase at an incremental rate throughout the two-year period (rather than one-year), and therefore calculated the number of updated reports by extending its methodology to a 24-month timeframe (rather than a 12-month timeframe). From Year 3 onward, estimates related to initial BOI reports would be based on the number newly created reporting companies.

sensitive nature of investigations, FinCEN rejects this alternative.

b. Reporting Timeline for Updated BOI Reports

As in the NPRM, FinCEN considered whether to require reporting companies to update BOI reports within 30 days of a change to submitted BOI (as proposed in the NPRM) or within one year of such change (the maximum permitted under the CTA).[411] FinCEN compared the cost to the public of these two scenarios.

FinCEN assumed that allowing reporting companies to update reports within one year would result in ''bundled'' updates encompassing multiple changes. For example, a reporting company that knows one beneficial owner plans to dispose of ownership interests in two months while another plans to change residences in four might wait several months to report both changes to FinCEN. Meanwhile, law enforcement agencies and others with authorized access to—and interest in—the relevant reporting company's BOI would be operating with outdated information and potentially wasting time and resources. A shorter 30-day requirement, on the other hand, would be more likely to result in reporting companies filing discrete reports associated with each individual change, allowing those with authorized access to BOI to stay better updated.

From a cost perspective, FinCEN assumed that bundling would result in reporting companies submitting approximately half as many updated reports overall. FinCEN also assumed that bundled reports would have the same time burden per report as discrete updated reports, given that the expected BOSS functionality requires all information to be submitted on each updated report.

Were FinCEN to require updates within one year instead of 30 days, 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 potentially reduced burden in its estimate other than in the time required to collect information for an updated report, but discusses this potential collection cost more in the cost analysis of this alternative. FinCEN's cost estimates for updated reports also do not currently account for the possibility that individuals using FinCEN identifiers might further reduce costs by alleviating reporting companies of the responsibility of filing updated BOI for those beneficial owners. This is because those beneficial owners would be responsible for keeping the BOI associated with their FinCEN identifiers updated, consistent with the requirements of the rule.

FinCEN estimated that requiring reporting companies to update reports in one year instead of 30 days results in an aggregate present value cost decrease of approximately $7.4 billion at a seven percent discount rate or $9.1 billion at a three percent discount rate over a 10-year horizon. The annual aggregate cost savings to reporting companies (which FinCEN assumes are small entities) would be approximately $519.3 million in the first year and $1.1 billion each year thereafter. These cost savings would be due to reporting companies filing fewer reports.

While FinCEN does not dismiss an aggregate cost savings to the public, the bureau does not view the savings in that amount as offsetting the corresponding degradation to BOI database quality that would come with allowing reporting companies to wait a full year to update BOI with FinCEN. As noted in both the preamble and NPRM, FinCEN considers keeping the database current and accurate as essential to keeping it highly useful, and that allowing reporting companies to wait to update beneficial ownership information for more than 30 days—or allowing them to report updates on only an annual basis—could cause a significant degradation in accuracy and usefulness of the database. While risks such as this are difficult to quantify, these concerns justify the increased cost.

c. Company Applicant Reporting for Existing Reporting Companies and Updates for All Reporting Companies

In the NPRM, FinCEN considered requiring reporting companies in existence on the rule's effective date to report company applicant information with their initial reports. FinCEN further considered requiring all reporting companies to update changes to company applicant information as they occur in the future. Many comments criticized these requirements as overly burdensome. While the final rule does not include these requirements, this alternative analysis assesses what the cost would have been if those requirements had been retained.

Numerous comments to the NPRM noted that existing entities would bear a significant cost in identifying company applicants, who may not have had contact with the reporting company since its initial formation. Based on comments, FinCEN assesses that each existing reporting company, regardless of structure, would have incurred an additional burden of 60 minutes per initial report in locating and reaching out to the company applicant(s). This estimate represents the average amount of time to locate information for company applicants, taking into account there may be instances where the company applicant is known, with easily obtained information, as well as other instances where the company applicant is unknown and difficult or impossible to locate. Using the wage estimate from the cost analysis, this would total an additional $56.76 per initial report in Year 1. FinCEN only applies this burden to Year 1 to reflect that it would affect existing entities' initial BOI reports, which would be filed within Year 1. FinCEN acknowledges that some of the initial BOI reports in Year 1 will be from newly created entities that would likely not incur this additional time burden, but to be conservative, FinCEN applied the burden to all initial reports in Year 1 for this analysis. At least one commenter also noted that such a requirement could result in costs to state governments, as reporting companies may enlist secretaries of states or similar offices to help look for historical company applicants, which FinCEN has not separately calculated, but assumes is part of the 60 minutes added to the burden estimate.

In the NPRM, FinCEN estimated how many report updates would likely stem from changes to company applicant changes information.[412] This was based on an assumption that 90 percent of BOI reports would have one company applicant while 10 percent of reports would have two company applicants. The RIA includes an updated distribution of reporting companies' beneficial ownership structures, which is applied to this analysis. The updated distribution estimates that 59 percent of reporting companies would have no unique company applicant (the company applicant would be the beneficial owner); 36.1 percent would have one company applicant; and 4.9 percent would have two company applicants. Applying the estimated cost of an updated report from the cost analysis (which increased from the cost assessed in the NPRM), this would result in an additional cost in Year 1 of $2.3 billion and $1 billion each year thereafter.

In addition to the burden of submitting initial company applicant information and subsequent report updates, companies may have also

[411] 31 U.S.C. 5336(b)(1)(D).

[412] 86 FR 69963 (Dec. 8, 2021).

incurred a cost associated with monitoring changes to company applicant information. This cost may have been significant, especially given that company applicants are less likely to stay in regular contact with associated reporting companies. This additional burden from ongoing monitoring is not separately estimated and could result in an underestimation of the cost savings to reporting companies in this alternative scenario.

FinCEN estimated that requiring company applicant reporting and updates for existing entities results in a present value cost increase of approximately $8.3 billion at a seven percent discount rate or $9.9 billion at a three percent discount rate over a 10-year horizon. FinCEN did not select this scenario, and thereby reduced the cost to small businesses.

d. Alternative Definitions of Beneficial Owner

FinCEN considered many alternative definitions of ''beneficial owner'' due to comments received in the NPRM. Some of these comments proposed that the definition of beneficial owner should match the definition in the 2016 CDD Rule, under which one person must be identified as in substantial control, with up to four other beneficial owners identified by way of equity interests of 25 percent or more, for a maximum of 5 beneficial owners.

Using the 2016 CDD Rule's definition of ''beneficial owner'' would decrease the time burden for some reporting companies reviewing which individuals to report as beneficial owners in their initial reports. This is because that definition is already known to most reporting companies, ties ownership to narrow ''equity interests'' rather than ''ownership interests,'' and caps the maximum number of beneficial owners a company can have for purposes of the rule at five. This combination would make it easier for some entities to identify individuals to report as beneficial owners, and would reduce the number of individuals they have to report. However, FinCEN assesses that the majority of reporting companies are unlikely to have more than five beneficial owners to report under the rule. FinCEN assumes that 59 percent of reporting companies will have one beneficial owner and an additional 36.1 percent of reporting companies will have four beneficial owners, and therefore would not significantly benefit in terms of reporting burden from the narrower definition.[413] Most of the benefits of using the 2016 CDD Rule's definition of beneficial owner therefore seem likely to accrue to reporting companies with more complex beneficial ownership structures, which FinCEN estimates at 4.9 percent of reporting companies. All reporting companies would benefit from being able to reuse information previously provided to financial institutions for compliance with a CDD rule with which they are already familiar (existing reporting companies) or that would have to be provided to financial institutions in order to obtain necessary financial services (new reporting companies).

Because reporting companies are already familiar with the 2016 CDD Rule and would not need to spend time understanding the requirement, FinCEN assumes that adopting the 2016 CDD Rule's definition of ''beneficial owner'' would reduce the time burden of the first portion of initial BOI reports' time burden by a third for all reporting companies, regardless of beneficial ownership structure. In the cost analysis, the first portion of initial BOI reports' time burden is to ''read FinCEN BOI documents, understand the requirement, and analyze the reporting company definition.'' However, if the 2016 CDD Rule definition was adopted, ''understanding the requirement'' would not apply, as reporting companies are already familiar with the requirement. The second portion of initial reports' time burden, ''identify . . . beneficial owners . . . ,'' would likely also be less burdensome given reporting companies may have already done this exercise to comply with the 2016 CDD Rule. However, FinCEN assumes the decreased burden in the first portion of the time burden will already account for this. Therefore, this decrease in burden will result in a per-report cost reduction of approximately $25.23 for reporting companies with a simple structure.

Additionally, reporting companies with complex beneficial ownership structures, which FinCEN assessed to be 4.9 percent of reporting companies, will have a decreased time burden for other steps related to filing initial BOI reports and updated reports. This is because FinCEN currently assesses the costs to such entities in the scenario in which they report 10 people on their BOI report (8 beneficial owners and 2 company applicants). If the 2016 CDD Rule definition of ''beneficial owner'' was adopted, then such entities would instead report the maximum of 5 beneficial owners and 2 company applicants, or 7 people. For consistency, FinCEN assumes that this would result in a reduction of a third of the time for ''identifying, collecting and reviewing information about beneficial owners and company applicants,'' and a reduction of 30 minutes in filling out and filing the report (10 minutes for each of the 3 beneficial owners no longer reported, given the definition's cap). With all of these time burden reductions included, the initial report time burden estimate for reporting companies with complex beneficial ownership structures would be reduced by 390 minutes (650 minutes versus 260 minutes), which results in a per report cost reduction of approximately $369 ($2,614.87 versus $2,245.95).[414]

In order to calculate the total cost change of the rule under this alternative, FinCEN assumes that all time burdens related to updated reports and FinCEN identifiers would remain the same with one exception. FinCEN applies the same time reduction for complexly structured reporting companies' updated report time burden as applied for initial reports (a decrease from 110 minutes to 80 minutes) to account for only 7 persons submitted on the form. Therefore, FinCEN assesses that adopting the 2016 CDD Rule's definition of ''beneficial owner'' would decrease the cost in Year 1 by $3.4 billion and $614.5 million in each year thereafter. The present value cost decreases by approximately $7 billion at a seven percent discount rate or $8 billion at a three percent discount rate over a 10-year horizon. This benefit to small businesses would come at the significant cost of undermining the purpose of the CTA, which specifically calls for the identification of ''*each* beneficial owner of the applicable reporting company,'' without reference to a maximum number. As explained in the preamble, the 2016 CDD Rule's numerical limitation on beneficial owners contributes to the omission of persons that have substantial control of a reporting company, but are not reported. Replicating that approach in this rule would primarily benefit more complex entities, with the foreseeable consequence of allowing illicit actors to easily conceal their ownership or control of legal entities. This is a considerable cost to the U.S. economy that FinCEN assesses would not benefit

[413] *See* Table 1 in the RIA and preceding text for discussion regarding the distribution of reporting companies.

[414] This cost analysis estimates an hourly wage rate of $56.76. Dividing this wage rate by 60 minutes yields a cost of approximately $0.95 per minute; if this rate is multiplied by 390 minutes, the cost is approximately $369.

most reporting companies. This lopsided balance led FinCEN to reject suggestions to adopt the 2016 CDD Rule's definition of ''beneficial ownership'' in the final reporting rule.

C. Unfunded Mandates Reform Act

Section 202 of the Unfunded Mandates Reform Act of 1995, Public Law 104–4 (Unfunded Mandates Reform Act) requires that an agency prepare a budgetary impact statement before promulgating a rule that includes a federal mandate that may result in expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year, adjusted for inflation. FinCEN believes that the RIA provides the analysis required by the Unfunded Mandates Reform Act.

D. Paperwork Reduction Act

The new reporting requirement contained in this rule (31 CFR 1010.380) has been approved by OMB in accordance with the Paperwork Reduction Act of 1995 (PRA), 44 U.S.C. 3501 *et seq.,* under control number 1506–ABXX. The PRA imposes certain requirements on federal agencies in connection with their conducting or sponsoring any collection of information as defined by the 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 OMB control number. The rule includes two information collection requirements: BOI reports, which will be submitted to FinCEN via a form, and FinCEN identifier information for individuals, which will be submitted to FinCEN via a web-based application. FinCEN removed the separate PRA analysis for foreign pooled investment vehicles reports that was included in the NPRM because such reports are now included in the BOI report burden and cost estimates.

As discussed in the RIA, FinCEN revised estimates for the reporting requirements based on comments received in the NPRM and updates to underlying data sources. All revisions to the estimates are explained in the RIA.

i. BOI Reports

Reporting Requirements: In accordance with the CTA, the rule imposes a new reporting requirement on certain entities to file with FinCEN reports that identify the entities' beneficial owners, and in certain cases their company applicants.[415] The report must also contain information about the entity itself. The reporting company must certify that the report is true, correct, and complete. The rule also requires that reporting companies update the information in these reports as needed, and correct any previous incorrectly reported information, within specific timeframes. The collected information will be maintained by FinCEN and made accessible to authorized users.

OMB Control Number: 1506–0076.

Frequency: As required.[416]

Description of Affected Public: Domestic entities that are: (1) corporations; (2) limited liability companies; or (3) 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, and foreign entities that are: (1) corporations, limited liability companies, or other entities; (2) formed under the law of a foreign country; and (3) 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 rule does not require corporations, limited liability companies, or other entities that are described in any of 23 specific exemptions to file BOI reports.

Estimated Number of Respondents: As explained in detail in the RIA, the number of entities that are reporting companies is difficult to estimate. FinCEN has updated the estimated number of entities that are reporting companies from the NPRM to account for comments and more recent sources of information. FinCEN assumes that existing entities that meet the definition of reporting company and are not exempt will submit their initial BOI reports in Year 1. Therefore, the estimated number of initial BOI reports in Year 1 is 32,556,929.[417] In Year 2 and beyond, FinCEN estimates that the number of initial BOI reports will be 4,998,468, which is the same estimate as the number of new entities per year that meet the definition of reporting company and are not exempt.[418] The total five-year average of expected BOI initial reports is 10,510,160. In order to estimate the total burden hours and costs associated with the reporting requirement, FinCEN further assesses a distribution of the reporting companies' beneficial ownership structure. FinCEN assumes that 59 percent of reporting companies will have a simple structure (*i.e.,* 1 beneficial owner who is also the company applicant), 36.1 percent will have an intermediate structure (*i.e.,* 4 beneficial owners and 1 company applicant), and 4.9 percent will have a complex structure (*i.e.,* 8 beneficial owners and 2 company applicants). FinCEN estimates that 6,578,732 updated reports would be filed in Year 1, and 14,456,452 such reports would be filed annually in Year 2 and beyond.[419] The total five-year average of expected BOI update reports is 12,880,908.

Estimated Time per Respondent: FinCEN has updated the estimated time burden per respondent to account for comments received to the NPRM. Considering the comments and the rule, it is apparent that the time burden for filing initial BOI reports will vary depending on the complexity of the reporting company's structure. FinCEN therefore estimates a range of time burden associated with filing an initial BOI report to account for the likely variance among reporting companies. FinCEN estimates the average burden of reporting BOI as 90 minutes per response for reporting companies with simple beneficial ownership structures (40 minutes to read the form and understand the requirement, 30 minutes to identify and collect information about beneficial owners and company applicants, 20 minutes to fill out and file the report, including attaching an image of an acceptable identification document for each beneficial owner and company applicant). FinCEN estimates the average burden of reporting BOI as 650 minutes per response for reporting companies with complex beneficial ownership structures (300 minutes to read the form and understand the requirement, 240 minutes to identify and collect information about beneficial owners and company applicants, 110 minutes to fill out and file the report, including attaching an image of an acceptable identification document for each beneficial owner and company applicant). FinCEN estimates the

[415] 31 U.S.C. 5336(b) and 31 CFR 1010.380(b).

[416] For BOI reports, there is an initial filing and subsequent filings; the latter are required as information changes or if previously reported information was incorrect.

[417] Please see RIA cost analysis for the underlying sources and analysis related to this estimate.

[418] Please see RIA cost analysis for the underlying sources and analysis related to this estimate. As noted therein, for analysis purposes FinCEN assumes that the number of new entities per year from years 2–10 will be the same as the 2024 new entity estimate, which accounts for a growth factor of 13.1 percent per year from the date of the underlying source (2020) through 2024. Annually thereafter, FinCEN assumes no change in the number of new entities. FinCEN provides an alternative cost analysis in the conclusion section where the 13.1 percent growth factor continues throughout the entire 10-year time horizon of the analysis (*i.e.,* through 2033). However, this growth factor is possibly an overestimate given that it is a based on a relatively narrow timeframe of data (two years).

[419] Please see RIA cost analysis for the underlying sources and analysis related to these estimates.

average burden of updating such reports for reporting companies with simple beneficial ownership structures as 40 minutes per update (20 minutes to identify and collect information about beneficial owners or company applicants and 20 minutes to fill out and file the update). FinCEN estimates the average burden of updating such reports for reporting companies with complex beneficial ownership structures as 170 minutes per update (60 minutes to identify and collect information about beneficial owners or company applicants and 110 minutes to fill out and file the update). FinCEN also assesses that reporting companies with intermediate beneficial ownership structures will have a time burden that is the average of the time burden for reporting companies with simple and complex structures reporting companies.

Estimated Total Reporting Burden Hours: FinCEN estimates that during Year 1, the filing of initial BOI reports will result in approximately 118,572,335 burden hours for reporting companies.[420] In Year 2 and beyond, FinCEN estimates that the filing of initial BOI reports will result in 18,204,421 burden hours annually for new reporting companies.[421] The five-year average of burden hours for initial BOI reports is 38,278,004 hours. FinCEN estimates that filing BOI updated reports in Year 1 would result in approximately 7,657,096 burden hours for reporting companies.[422] In Year 2 and beyond, the estimated number of burden hours is 16,826,105.[423] The five-year average of burden hours for updated BOI reports is 14,992,203 hours. The total five-year average of burden hours for BOI reports is 53,270,307.

Estimated Total Reporting Cost: Considering the comments and the rule, it is apparent that the costs for filing initial BOI reports will vary depending on the complexity of the reporting company's structure. FinCEN therefore estimates a range of costs associated with filing an initial BOI report to account for the likely variance among reporting companies. FinCEN estimates the average cost of filing an initial BOI report per reporting company to be a range of $85.14–$2,614.87.[424] FinCEN estimates the average cost of filing an updated BOI report per reporting company to be $37.84–$560.81.[425]

For initial BOI reports, the range of total costs in Year 1, assuming for the lower bound that all reporting companies are simple structures and assuming for the upper bound that all reporting companies are complex structures, is $2.8 billion–$85.1 billion.[426] Applying the distribution of reporting companies' structure explained in connection with Table 1, FinCEN calculates total costs in Year 1 of initial BOI reports to be $21.7 billion.[427] In Year 2 and onwards, in which FinCEN assumes that initial BOI reports will be filed by newly created entities, the range of total costs is $425.6 million–$13.1 billion annually.[428] Applying the reporting companies' structure distribution explained in connection with Table 1, the estimated total cost of initial BOI reports annually in Year 2 and onwards is $3.3 billion.[429] [430]

For updated BOI reports, the range of total costs in Year 1, assuming for the lower bound that all reporting companies are simple structures and assuming for the upper bound that all reporting companies are complex structures is $249 million–$3.7 billion.[431] Applying the distribution of reporting companies' structure, FinCEN calculates total costs in Year 1 of updated BOI reports to be $1 billion.[432] In Year 2 and onwards, the range of total costs is $547 million–$8.1 billion annually.[433] Applying the reporting companies' structure distribution, the estimated total cost of updated BOI reports annually in Year 2 and onwards is $2.3 billion.[434] The five-year average cost for initial reports is $6,996,732,512 and $2,033,391,518 for updated reports.

Please note, there are no non-labor costs associated with these collections of information because FinCEN assumes that reporting companies already have the necessary equipment and tools to comply with the regulatory requirements.

ii. Individual FinCEN Identifiers

Reporting Requirements: The rule would require the collection of information from individuals in order to issue them a FinCEN identifier.[435] This is a voluntary collection. The rule will require individuals to report to FinCEN certain information about themselves to receive a FinCEN identifier, in accordance with the CTA.[436] An individual is also required to submit updates of their identifying information as needed. FinCEN will store such information in its BOI database for access by authorized users.

OMB Control Number: 1506–0076.

Frequency: As required.

Description of Affected Public: The affected parties of this collection would overlap somewhat with parties required to submit BOI reports, given that reporting companies may request FinCEN identifiers. For individuals requesting FinCEN identifiers, FinCEN acknowledges that anyone who meets the statutory criteria could apply for a FinCEN identifier under the rule. However, the primary incentives for individual beneficial owners to apply for a FinCEN identifier are likely data security (an individual may see less risk in submitting personal identifiable information to FinCEN directly and

[420] ((0.59 × 32,556,929) × (90/60)) + ((0.361 × 32,556,929) × (370/60)) + ((0.049 × 32,556,929) × (650/60)) = 118,572,335.

[421] ((0.59 × 4,998,468) × (90/60)) + ((0.361 × 4,998,468) × (370/60)) + ((0.049 × 4,998,468) × (650/60)) = 18,204,421.

[422] ((0.59 × 6,578,732) × (40/60)) + ((0.361 × 6, 578,732) × (105/60)) + ((0.049 × 6, 578,732) × (170/60)) = 7,657,096.

[423] ((0.59 × 14,456,452) × (40/60)) + ((0.361 × 14,456,452) × (105/60)) + ((0.049 × 14,456,452) × (170/60)) = 16,826,105.

[424] (90/60) × $56.76 = $85.14 and ((650/60) × $56.76) + $2,000 = $2,614.87.

[425] (40/60) × $56.76 = $37.84 and ((170/60) × $56.76) + $400 = $560.81.

[426] (32,556,929 × $85.14) = $2,771,769,963.58 and (32,556,929 × $2,614.87) = $85,132,196,638.53.

[427] ((0.59 × 32,556,929) × $85.14) + ((0.361 × 32,556,929) × $1,350.00) + ((0.049 × 32,556,929) × $2,614.87) = $21,673,487,885.48.

[428] (4,998,468 × $85.14) = $425,550,075.79 and (4,998,468 × $2,614.87) = $13,070,353,315.07.

[429] ((0.59 × 4,998,468) × $85.14) + ((0.361 × 4,998,468) × $1,350.00) + ((0.049 × 4,998,468) × $2,614.87) = $3,327,532,419.21.

[430] FinCEN assumes that each reporting company will make one initial BOI report. Given the 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 will submit their initial BOI reports in Year 1, totaling 32.6 million reports. Additionally, FinCEN has applied a 6.83 percent growth factor each year since the date of the underlying source (2020) to account for the creation of new entities. For analysis purposes, FinCEN assumes that the number of new entities per year from years 2–10 will be the same as the 2024 new entity estimate, which accounts for a growth factor of 13.1 percent per year from the date of the underlying source (2020) through 2024. Annually thereafter, FinCEN assumes no change in the number of new entities. FinCEN provides an alternative cost analysis in the conclusion section where the 13.1 percent growth factor continues throughout the entire 10-year time horizon of the analysis (*i.e.,* through 2033). However, this growth factor is possibly an overestimate given that it is a based on a relatively narrow timeframe of data (two years).

[431] (6,578,732 × $37.84) = $248,927,811.14 and (6,578,732 × $560.81) = $3,689,435,948.74.

[432] ((0.59 × 6,578,732) × $37.84) + ((0.361 × 6,578,732) × $299.33) + ((0.049 × 6,578,732) × $560.81) = $1,038,524,428.72.

[433] (14,456,452 × $37.84) = $547,007,086.12 and (14,456,452 × $560.81) = $8,107,360,919.04.

[434] ((0.59 × 14,456,452) × $37.84) + ((0.361 × 14,456,452) × $299.33) + ((0.049 × 14,456,452) × $560.81) = $2,282,108,290.77.

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

[436] 31 U.S.C. 5336(b)(3)(A)(i) and 31 CFR 1010.380(b)(4).

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.[437] 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.[438] 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,[439] with an annual burden of 16,662 hours thereafter.[440] 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,[441] with an annual burden of 4,429 hours thereafter.[442] 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.[443] 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.[444] 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).[445] Under the CRA, a major rule generally may take effect no earlier than 60 days after the rule is published in the **Federal Register**.[446]

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-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, 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

[437] 32,556,929 × 0.01 = 325,569 and 4,998,468 × 0.01 = 49,985, respectively.

[438] Please see RIA cost analysis for the underlying sources and analysis related to these estimates.

[439] 325,569 × (20/60) = 108,535.

[440] 49,985 × (20/60) = 16,662.

[441] 12,180 × (10/60) = 2,030.

[442] 26,575 × (10/60) = 4,429.

[443] ($56.76 × (20/60)) × 325,569 = $6,159,488.81 and ($56.76 × (20/60)) × 49,985 = $945,666.84.

[444] ($56.76 × (10/60)) × 12,180 = $115,218.68 and ($56.76 × (10/60)) × 26,575 = $251,386.22.

[445] 5 U.S.C. 804(2) *et seq.*

[446] 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)(xviii) of this section, and is formed under the laws of a foreign country, such entity shall be deemed a reporting company for purposes of paragraphs (a) and (b) of this section, except the report shall include the information required under paragraph (b)(1) of this section solely with respect to an individual who exercises substantial control over the entity. If more than one individual exercises substantial control over the

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

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

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

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

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

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

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

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

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

(B) [Reserved]

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

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

(2) If any such application was inaccurate when filed and remains inaccurate, the individual shall file a corrected application correcting all inaccuracies within 30 calendar days after the date on which the individual becomes aware or has reason to know of the inaccuracy. A corrected application filed under this paragraph within this 30-day period will be deemed to satisfy 31 U.S.C. 5336(h)(3)(C)(i)(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)(xix)(A) for the 180-day period beginning on the date of the loss of such tax-exempt status;

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

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

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

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

(B) Is a United States person;

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

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

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

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

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

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

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

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

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

(B) Is not engaged in active business;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(A) Board representation;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(2) As a beneficiary who:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(6) *Operating presence at a physical office within the United States.* The term ''has an operating presence at a physical office within the United States'' means that an entity regularly conducts its business at a physical location in the United States that the entity owns or leases and that is physically distinct from the place of business of any other unaffiliated entity.

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

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

(ii) Any company that:

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

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

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

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

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

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

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

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

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

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

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

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

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

Himamauli Das,

Acting Director, Financial Crimes Enforcement Network.

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