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## FinCEN Releases Proposed Regulations on Beneficial Ownership Reporting

The U.S. Department of the Treasury's Financial Crimes Enforcement Network (FinCEN) released [proposed regulations](#) that would implement Section 6403 of the Corporate Transparency Act (enacted as part of the [National Defense Authorization Act for Fiscal Year 2021](#)), which requires that certain companies (both domestic entities and foreign entities registered to do business within the U.S.) submit a report to FinCEN containing the beneficial owner and company applicant information. The proposed regulations provide that, generally, a beneficial owner is an individual who: exercises substantial control over the reporting company or owns or controls at least 25% of the ownership interest of the reporting company. A company applicant is an individual who files the document that forms the entity, in the case of a domestic entity, and the individual who files the document that first registers the entity to do business in the United States in the case of a foreign entity. The proposed regulations further provide that domestic reporting companies created or foreign reporting companies registered to do business in the United States before the effective date of the final regulations would have one year from the effective date of the final regulations to file their initial report with FinCEN. Companies that become subject to the new rules after the regulations effective date would be required to file their initial report with FinCEN within 14 calendar days of the date on which they are created (domestic entity) or registered to do business in the U.S. (foreign entity). FinCEN intends to address the other requirements of Section 6403, like the requirements regarding the maintenance and disclosure of the information it receives, in future rulemakings.

## IRS Issues Guidance on Employee Retention Credit Termination

The IRS [announced](#) that it has issued guidance, [Notice 2021-65](#), regarding the retroactive termination of the employee retention credit. Notice 2021-65 modifies Notice 2021-49 and Notice 2021-24 to implement statutory changes made by the Infrastructure Investment and Jobs Act (Infrastructure Act). (See our prior coverage [here](#) and [here](#).) The Infrastructure Act amended Section 3134(n) of the Internal Revenue Code of 1986, as amended, to provide that the employee retention credit thereunder shall apply only to wages paid after June 30, 2021, and before Oct. 1, 2021 (or, in the case of wages paid by an eligible employer which is a recovery startup business, Jan. 1, 2022). (It also amended the definition of recovery startup business for calendar quarters beginning after Sept. 30, 2021.) As such, employers, other than recovery startup businesses, are not entitled to the employee retention credit for wages paid on or after Oct. 1, 2021, and the Notice revises prior guidance, which allowed for the credit in the fourth quarter of 2021. Specifically, the Notice states that employers that received an advance payment of the credit with respect to the fourth quarter of 2021 and who are no longer eligible for the credit will need to repay such an amount, and it provides a mechanism for doing so. The Notice also states that the IRS will no longer waive the failure to deposit penalties for employers that reduce deposits in anticipation of the employee retention credit after Dec. 20, 2021 (unless the employer is a recovery startup business), but it does address penalty relief

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for employers who took the credit into account when depositing employment taxes for wages paid from Oct. 1, 2021, to Jan. 1, 2022.

### **IRS Posts FAQs for 2021 Short-Tax Year Returns and Schedules K-2 and K-3**

The IRS has posted [FAQs](#) with respect to pass-through entities that have a short tax year in 2021 and new schedules K-2 and K-3. Schedules K-2 and K-3 for Forms 1065, 1120-S, and 8865 (Forms) for tax year 2021 were finalized by the IRS over the summer and aim to provide clarity on international reporting requirements. The FAQs address how and when the new schedules K-2 and K-3 should be attached to their respective forms.



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