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The Corporate Transparency Act: Beneficial Ownership Reporting Requirements for Certain Companies Doing Business in the United States

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Beginning January 1, 2024, certain privately held companies, known as "reporting companies," will be required to file a Beneficial Ownership Information (BOI) Report to identify, and provide personal information about, their direct and indirect owners to the U.S. Department of the Treasury's Financial Crimes Enforcement Network (FinCEN) under the reporting rules of the Corporate Transparency Act (CTA) and the underlying regulations. The CTA reporting rules are intended to help FinCEN combat financial crimes, including money laundering, tax evasion, terrorist financing, and other corrupt financing activities.

Reporting companies in existence as of January 1, 2024, will have until January 1, 2025, to file an initial BOI Report. Reporting companies formed on or after January 1, 2024, must file an initial BOI Report within 30 [1] days of formation. FinCEN will store the BOI Reports in a non-public database, accessible only in connection with authorized government activities related to national security, taxes, or law enforcement.

This Client Update provides a general overview of how to determine if a company is a "reporting company" and if so, what information is required by the new rules.

Reporting Company

A "reporting company" is defined as a domestic or foreign 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 of a state or Native American tribe. Foreign entities doing business in the United States and foreign individuals with substantial control over non-exempt domestic or foreign reporting companies should be aware of the CTA reporting requirements and exemptions.

Exemptions

There are 23 categories of companies that are exempt from the BOI reporting requirement. These exclusions include companies that are already subject to some sort of government oversight, such as public companies, banks, public utilities, tax-exempt nonprofits, and insurance companies. Furthermore, there is an exemption for "large" companies, defined as those organizations with more than 20 full-time employees in the United States, having reported over $5 million or more of annual gross revenue, and operating from leased or owned physical premises in the United States. Additionally, controlled or wholly owned subsidiaries of most exempt companies are themselves exempt. A company that meets the definition of a reporting company will need to evaluate its specific circumstances to determine whether it meets any exemption criteria under the CTA reporting rules.

The BOI Report

The rule requires every non-exempt reporting company to file a BOI Report within the timeframe stated above. The BOI Report will include basic information about the reporting company, such as its full legal name and any trade name or "doing business as" name, its physical address, its jurisdiction of formation or registration, and its IRS taxpayer identification number. In addition, the reporting company must (a) identify its "beneficial owners" and, for reporting companies formed on or after January 1, 2024, "company applicants" and (b) provide personal information about each individual it identifies.

A "beneficial owner" is any individual who, directly or indirectly, exercises "substantial control" over, or owns or controls at least 25 percent of the ownership interest of, a reporting company. An individual may be a beneficial owner by virtue of their control over the company, ownership interests, or both. An individual's ownership percentage takes into consideration direct and indirect ownership, as well as control over interests in the reporting company. An individual may have "substantial control" if they are a senior officer, have authority to appoint or remove officers or directors, make important business decisions, or otherwise have substantial control over the reporting company.

Reporting companies formed on or after January 1, 2024, will identify at least one, but not more than two, company applicants. For all such reporting companies, the first "company applicant" is the individual who filed the documents to create the entity, in the case of a domestic reporting company, or to register the entity, in the case of a foreign reporting company. The second possible company applicant is the individual primarily responsible for directing or controlling the filing of the creation or registration documents, as applicable, for the entity.

For each beneficial owner and company applicant, the BOI Report will include the individual's full legal name, date of birth, complete current residential address, and a unique identifying number from and copies of an acceptable identification document, such as a drivers' license or passport. For any beneficial owner or company applicant who has obtained a FinCEN identifier, the reporting company may provide the FinCEN identifier in the BOI Report instead of the foregoing information.

The rule requires a reporting company to file an updated BOI Report within 30 days of any change in the information included on the BOI Report.

Penalties and Enforcement

The CTA contains both civil and criminal penalties for noncompliance. Individuals and entities can be assessed a fine of $500 per day until they come into compliance with CTA requirements. The criminal penalties can result in up to two years in jail and/or a financial penalty of up to $10,000.

The information in BOI Reports may be accessed by law enforcement investigating matters such as money laundering, tax evasion, terrorist financing, and other corrupt financing activities and matters of national security.

It is important for companies to understand their reporting obligations and obtain and submit all required information. The recently published FinCEN guide, "Small Entity Compliance Guide," includes helpful information to assist entities in understanding and complying with the new requirements and reporting obligations.

For more information on complying with the CTA, including the determination of whether your entity is a reporting company, or if it may be an exempt entity, and questions about filing BOI Reports, contact the authors listed above.

FOOTNOTES

[1] FinCEN has proposed an amendment to the reporting rules to allow **90 days** to file an initial BOI Report for reporting companies created or registered during the year 2024.

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