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CLIENT ALERT

New Reporting Required Under the Corporate Transparency Act

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On January 1, 2024, the Corporate Transparency Act (“**CTA**”) took effect. The CTA requires many types of entities (both domestic entities and foreign entities registered to do business in the U.S.) to report certain information, including beneficial ownership information (“**BOI**”) and entity information, to the U.S. Treasury Department’s Financial Crimes Enforcement Network (“**FinCEN**”).

Under the CTA, entities that are not exempt (as detailed below) are required to file initial BOI reports within the following periods of time:

DATE OF ENTITY CREATION/REGISTRATION	DEADLINE FOR FILING BOI REPORT
Before January 1, 2024	January 1, 2025
Between January 1, 2024, and December 31, 2024	90 days after creation/registration
January 1, 2025, and after	30 days after creation/registration

Purpose

The CTA’s mandatory BOI reporting is designed to aid the government in policing illicit actors hiding behind shell companies in order to violate anti-money laundering, terrorism financing, and sanctions laws.

Who Must Report

The CTA requires a “**Reporting Company**” to submit to FinCEN BOI reports along with information on each individual who created or directed the creation of the Reporting Company (each a “**Company Applicant**”). A separate BOI report must also be filed for each subsidiary of a Reporting Company.

The CTA defines Reporting Company broadly but exempts many types of entities from the definition.

Under the CTA an entity is a Reporting Company if it is:

1. A “domestic reporting company”—defined as a corporation, limited liability company, limited liability partnership, limited partnership or other similar entity created by the filing

of a document with a secretary of state or any similar office under the law of a U.S. state, commonwealth, territory, or U.S. possession (a “**State**”) or tribal territory; or

2. A “foreign reporting company”—defined as a corporation, limited liability company, limited liability partnership, limited partnership or other similar entity formed under the laws of a foreign country and registered to do business under the laws of a State or tribal territory. A foreign reporting company designation is NOT triggered by the filing of a trade name certificate with a town clerk or by the submission of information to the Internal Revenue Service to obtain an EIN number.

Although the CTA does not specify what “other similar entity” means, FinCEN has indicated that sole proprietorships, certain types of trusts, and general partnerships that are not created through the filing of a document with a secretary of state or similar office are NOT Reporting Companies.

Exemptions

The CTA contains 23 categories of entities that are exempted from the definition of Reporting Company (“**Exempt Entities**”). Many of the exemptions pertain to entities that already have reporting requirements and, as such, are subject to public oversight. As a result of the exemptions, the CTA’s reporting requirements will largely impact smaller companies in addition to shell or holding companies.

Below is a summary of certain exemptions under the CTA which are likely to apply to our firm’s clients:

1. Large companies—any entity that (1) employs more than 20 full-time employees in the U.S., (2) has a physical office in the U.S, and (3) reported more than \$5 MM in gross receipts or sales on its previous year’s Federal income tax return derived from U.S. sources.
 - a. Employee headcounts must be determined on an entity-by-entity basis. There is no ability to consolidate employee headcounts across multiple affiliated entities. In the case of affiliated corporations that file a Federal consolidated income tax return, gross receipts or sales is determined on an aggregate basis.
2. Banks
3. Public accounting firms registered in accordance with Section 102 of the Sarbanes-Oxley Act of 2002
4. Tax-exempt charitable organizations and certain other tax-exempt entities
5. Subsidiaries of certain Exempt Entities
6. Certain inactive companies

The other exemptions are as follows: public companies, certain registered investment companies and investment advisers, credit unions, depository institution holding companies, money services and money transmitting businesses (if registered with FinCEN), securities brokers or dealers, securities exchange or clearing agencies, other entities registered with the Securities Exchange Commission under the Securities Exchange Act of 1934, venture capital fund advisers, insurance companies, state licensed insurance producers, certain entities registered under the Commodity Exchange Act, public utilities, financial market utilities, entities that only assist tax-exempt entities, and government entities. The full list of exemptions may be viewed (in a summarized form) here: https://www.fincen.gov/boi-faqs#C_2.

Reporting Obligations

A Reporting Company must file an initial report with FinCEN containing information about itself, its Company Applicant(s), and BOI. There are no annual reporting requirements under the CTA. A Reporting Company need not file anything with FinCEN upon dissolution.

Reporting Company Information

In its initial report, the Reporting Company must report the following information about itself:

1. Full legal name
2. Any and all trade names or doing business as names
3. Business street address
4. Jurisdiction of formation or registration
5. IRS Taxpayer Identification Number (TIN) including an Employer Identification Number, or in the case of a foreign Reporting Company that has not been issued a TIN, a foreign tax identification number.

Company Applicant Information

In its initial report, a Reporting Company created after January 1, 2024, must provide information about its Company Applicant(s). A Company Applicant is any individual who files or directs or controls the filing of formation documents for a domestic Reporting Company or the first registration of a foreign Reporting Company to do business in any State or tribal territory. A Company Applicant refers to at least one but no more than two individuals.

For each Company Applicant the Reporting Company must provide, among other things, the following information:

1. Full legal name
2. Address (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; otherwise, the Company Applicant's residential street address)
3. Date of birth
4. A unique identifying number and an image of the document from which the unique identifying number is obtained. The unique identifying number must be from one of the following: an unexpired U.S. passport, an unexpired State-issued driver's license, an unexpired state, local, or tribal identification document, or, if an individual has none of the three foregoing documents, an unexpired foreign passport.

A Reporting Company created or registered prior to January 1, 2024, need not provide Company Applicant information.

Beneficial Ownership Information

“Beneficial Owner” is defined as any individual who directly or indirectly either (1) exercises substantial control over a Reporting Company or (2) owns or controls at least 25% of the Reporting Company's ownership interests. **“Substantial control”** includes within its definition anyone who serves as a senior officer (including individuals performing functions of or holding the title of President, Chief Executive Officer, Chief Financial Officer, Chief Operating Officer and general counsel) and certain directors, or determines or has substantial influence over important decisions. There is a presumption that there will always be at least one Beneficial Owner.

In its initial report, for each Beneficial Owner, a Reporting Company must report the following information:

1. Full legal name
2. Residential street address
3. Date of birth
4. A unique identifying number and an image of the document from which the unique identifying number is obtained. The unique identifying number must be from one of the following: an unexpired U.S. passport, an unexpired State-issued driver's license, an unexpired state, local, or tribal identification document, or, if an individual has none of the three foregoing documents, an unexpired foreign passport.

The definition of Beneficial Owner excludes the following:

1. A minor child as defined under the law of the State or tribal territory in which the Reporting Company is created or registered;
2. An individual acting as a nominee, intermediary, custodian, or agent on behalf of another;
3. An employee of a Reporting Company acting solely as an employee and not as a senior officer;
4. An individual whose only interest in a Reporting Company is a future interest through a right of inheritance; or
5. Certain creditors of a Reporting Company.

FinCEN ID

If a Company Applicant or a Beneficial Owner has obtained a FinCEN identifier (“**FinCEN ID**”) and provided it to a Reporting Company, the Reporting Company may include the FinCEN ID in its BOI reports in lieu of the information otherwise required. Having a FinCEN ID may simplify the reporting process and eliminate the need for Beneficial Owners and Company Applicants to share personal information with the Reporting Company. For information on how to obtain a FinCEN ID, see <https://fincenid.fincen.gov/landing>.

Reporting Deadlines

Reporting Companies Created Before January 1, 2024

Domestic Reporting Companies created before January 1, 2024, have until January 1, 2025, to meet reporting requirements. The same reporting timeframe applies to any entity that became a foreign Reporting Company before January 1, 2024.

Reporting Companies Created On or After January 1, 2024, and Before January 1, 2025

Reporting Companies created or registered, as applicable, on or after January 1, 2024, and before January 1, 2025, have 90 calendar days from the date of creation or registration, as applicable, to meet reporting requirements.

Reporting Companies Created on or after January 1, 2025

Reporting Companies created/registered on or after January 1, 2025, have 30 calendar days from the date of creation/registration to meet reporting requirements.

Updates and Corrections to Prior BOI Reports

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 has 30 calendar days from the date of change to update the information with

FinCEN. There is no requirement to update Company Applicant information once submitted unless the information originally reported was inaccurate, in which case the Reporting Company is required to correct the inaccurate information as described below.

A Reporting Company has 30 calendar days from the date it becomes aware, or has reason to know, that any information previously reported or filed with FinCEN (including as it relates to Beneficial Owners, Company Applicants, or Reporting Company information) was inaccurate when filed.

An individual who has obtained a FinCEN ID must update or correct any information previously submitted to FinCEN in its application for such FinCEN ID. If a Reporting Company includes the FinCEN ID of a Beneficial Owner rather than providing the personal information of such Beneficial Owner (i.e., full legal name, residential street address, date of birth, and unique identifying number), it appears that the Reporting Company does not need to update the information with FinCEN to report changes in such Beneficial Owner's personal information.

Change in Exemption Status

An Exempt Entity that becomes a Reporting Company has 30 calendar days from the date of the change triggering the loss of the exemption to file an initial BOI report, except in the case of an Exempt Entity whose exemption was based on its tax-exempt status (such filings must be made within 180 days of the loss of tax-exempt status). A Reporting Company that becomes an Exempt Entity should promptly file a "newly exempt entity" BOI report.

Penalties for Willful Violations of CTA

A person (including any individual, Reporting Company, or other entity) who willfully violates the CTA's BOI reporting requirements may be subject to civil penalties of up to \$500 per day for each day that the violation continues, along with criminal penalties. A willful violation may include the failure to file a BOI report, filing incomplete or false information, or a failure to correct or update previously reported information. Both individuals and Reporting Companies can be held liable for willful violations; a person is considered to have failed to report complete or updated BOI on behalf of a Reporting Company if the person causes the failure or was a senior officer of the Reporting Company at the time of the failure.

Conclusion

The CTA imposes new reporting requirements on many U.S. businesses, especially small businesses. As explained above, there are a number of exceptions to the definition of Reporting Company that companies will need to evaluate. Moreover, determining who is a Beneficial Owner can be complicated.

Further, there are many unanswered questions of interpretation and application, some of which are being addressed in regular updates to [FinCEN's Frequently Asked Questions](#). FinCEN is expected to release further guidance as more questions are asked and answered.

In *National Small Business United v. Yellen* the U.S. District Court for the Northern District of Alabama ruled that the CTA was unconstitutional. The relief granted in that case, however, only applies to the individual plaintiffs named in the action. Moreover, the case will likely be appealed. Therefore, we urge our clients to timely take action to comply with the CTA.

Other Resources:

FinCEN Frequently Asked Questions: <https://www.fincen.gov/boi-faqs>

FinCEN Small Entity Compliance Guide:

https://www.fincen.gov/sites/default/files/shared/BOI_Small_Compliance_Guide.v1.1-FINAL.pdf

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If you have questions about or would like assistance in complying with the CTA, please contact:

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