

Client Alert: The Corporate Transparency Act Deadline is Fast Approaching

Article By:

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- As part of the National Defense Authorization Act, the United States Congress enacted the Corporate Transparency Act (“CTA”) in 2021. With significant exceptions that are discussed below, the CTA requires businesses such as limited liability companies, corporations, and limited partnerships that have been organized by filing a document with the Pennsylvania Secretary of State’s Office (“reporting companies”), to report certain information, known as Beneficial Ownership Information (“BOI”), to the Financial Crimes Enforcement Network (“FinCEN”), a Bureau of the U.S. Department of Treasury. There the information will be stored in a secured database. The deadline for reporting this information is Dec. 31, 2024. While the CTA applies to an estimated 32 million entities, most of them have yet to file their BOI. With the deadline fast approaching, companies should act now to avoid substantial civil and criminal penalties for non-compliance. including civil penalties of up to \$500 per day for each day the violation continues and criminal penalties of up to \$10,000 in fines and/or up to 2 years in prison.

The following synopsis is a reference tool to assist with compliance issues:

1. The BOI requirements became effective on Jan. 1, 2024, for companies in existence as of Dec. 31, 2023. For businesses formed after Jan. 1, 2024, the BOI must be provided to FinCEN within 90 days after the date of formation.
2. Reporting companies are required to identify all individuals who exercise *substantial control* over the company. There is no limit to the number of individuals who can be reported for exercising substantial control. An individual exercises substantial control over a reporting company if they meet any of four general criteria:
 - (a) the individual is a senior officer;
 - (b) the individual has authority to appoint or remove certain officers or a majority of directors of the reporting company;
 - (c) the individual is an important decision-maker; or
 - (d) the individual has any other form of substantial control over the reporting company. Thus,

beneficial owners can include officers and directors of a corporation and managers of an LLC even if the manager is not a member of the LLC.

3. Reporting companies are required to identify all individuals who own or control *at least 25% of the ownership interests of the company*. Any of the following may be an ownership interest:

- equity, stock, or voting rights;
- a capital or profit interest;
- convertible instruments;
- options or other non-binding privileges to buy or sell any of the foregoing;
- and any other instrument, contract, or other mechanism used to establish ownership.

A reporting company may have multiple types of ownership interests including ownership by trusts.

4. A beneficial owner is a person, not an entity. The BOI to be submitted to FinCEN about a beneficial owner includes name, address, phone number, e-mail address, and Social Security number. Information about person (a "Company Applicant") who filed the reporting company's governing documents with the appropriate government agency such as a Secretary of State's Office, or is responsible for directing or controlling the filing, must also be reported to FinCEN. Most law firms and accounting firms have intentionally decided not to be Company Applicants, and instead refer their clients to third party service providers that will make the BOI filings.

5. There are 23 exemptions from reporting BOI under the CTA:

Exemption No.	Exemption Short Title
1	Securities reporting issuer
2	Governmental authority
3	Bank
4	Credit union
5	Depository institution holding company
6	Money services business
7	Broker or dealer in securities
8	Securities exchange or clearing agency
9	Other Exchange Act registered entity
10	Investment company or investment adviser
11	Venture capital fund adviser
12	Insurance company
13	State-licensed insurance producer
14	Commodity Exchange Act registered entity
15	Accounting firm
16	Public utility
17	Financial market utility
18	Pooled investment vehicle
19	Tax-exempt entity
20	Entity assisting a tax-exempt entity
21	Large operating company
22	Subsidiary of certain exempt entities
23	Inactive entity

Determining whether an entity qualifies for an exemption often requires a careful review of the

qualifying criteria. For example, to qualify for the large company exemption, a business must have at least 20 full-time employees and sales of more than \$5 million, and must be in the United States at a location it owns or leases. To qualify for the inactive status exemption, an entity must meet six criteria. To qualify for the tax-exempt entity exemption, the entity must have a 501(c) designation from the IRS; it is not sufficient for it simply to have been incorporated as a non-profit corporation. Whether or not a subsidiary of a tax-exempt entity qualifies will depend in part on whether the subsidiary is wholly owned. FinCEN's [Small Entity Compliance Guide](#) includes this table and checklists for each of the 23 exemptions that may help determine whether a company meets an exemption.

6. Even if an entity has dissolved or plans to dissolve before Dec. 31, 2024, it still must file BOI.
7. If an individual who is a beneficial owner or company applicant has obtained a FinCEN Number, the individual can provide that number to the reporting company in place of the personal information otherwise required on the reporting company's beneficial ownership information report. A FinCEN ID is a unique identifying number issued to an individual by FinCEN. Although a FinCEN ID is not required, obtaining one can simplify the reporting process.
8. One of the key exposures a reporting company has in connection with CTA are the risks associated with the systems it uses to maintain the confidentiality of the beneficial owner information and documentation copies in its possession, or risk having that information exposed, potentially violating data privacy laws that govern the collection, storage, and transmission of such information. Accordingly, reporting companies should implement measures to protect BOI.
9. Many older governing documents of reporting companies do not require owners to provide the reporting company with their beneficial ownership information, which can make compliance with these requirements difficult for companies with multiple tiers of ownership before getting to ultimate beneficial owners that are required to be reported. These existing governing documents should be updated to address this.

Conclusion

As noted above, the compliance deadline for filing BOI is Dec. 31, 2024. At this point, FinCEN has not indicated that this deadline will be extended. Further, since many entities have not yet filed, a year-end barrage of filings could possibly create log jams. Further, numerous entities that have filed on their own have made incorrect filings that need to be corrected.

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