Business Owner Alert: Corporate Transparency Act Requires New Ownership Reporting in 2024 and Beyond

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It has been many years in the making, but the effective date of the Corporate Transparency Act (the "CTA") is finally here. The CTA, enacted in 2021, is designed to prevent money laundering and other unlawful activity through the use of business entities to conceal identities. As of January 1, 2024, the CTA requires most private U.S. legal entities to file a report with the Financial Crimes Enforcement Network, or "FinCEN" (a part of the Department of the Treasury), providing information about the individuals who own and control the legal entity (i.e., the beneficial ownership of the legal entity).

FinCEN will collect, store, secure and maintain this information, and will manage the appropriate disclosure of this information to authorized entities (which are mainly government agencies, law enforcement, and certain financial institutions). The information will not otherwise be available to the public.

Depending on your perspective, the CTA will either unduly burden small business owners or will serve as an effective tool to combat criminal activity in the U.S. Either way, the effective date has arrived and everyone affected will now have to comply with the CTA requirements.

Who Must File Reports Under the CTA

The CTA applies to most smaller, private business entities formed or registered to do business in the U.S. It applies to entities that file formation documents with a Secretary of State or similar state agency, such as corporations, limited liability companies, and limited partnerships. It does not apply to sole proprietorships, general partnerships, or most types of trusts.

There are several types of businesses that are exempt from the CTA's reporting requirements. Many of the exemptions apply to businesses that operate in regulated fields, such as publicly traded companies, banks, insurance companies, governmental entities, charitable organizations, investment advisors, and certain large operating companies. Specifically, the following types of entities are exempt from the CTA reporting requirements:

(i) Any entity registered with the SEC, including publicly traded companies, securities broker/dealers, securities exchanges, and clearing agencies;

(ii) Governmental entities;

(iii) Banks, credit unions, and bank holding companies;

(iv) Investment companies/investment advisors;

(v) Insurance companies;

(vi) State-licensed insurance producers;

(vii) Commodities dealers;

(viii) Public accounting firms registered under the Sarbanes-Oxley Act;

(ix) Public utilities;

(x) Tax-exempt entities;

(xi) Inactive entities that have been in existence on or before January 1, 2020, is not engaged in an active business, is not owned by a foreign person, has had no change in ownership or sending/receipt of funds greater than $1,000 in the past 12 months, and holds no assets;

(xii) Large operating companies that (1) employ more than 20 full-time employees in the U.S., (2) filed, in the previous year, a Federal income tax return showing more than $5 million in gross receipts or sales, and (3) have an operating presence at a physical office within the U.S.; and

(xiii) Subsidiaries controlled or wholly owned by a company that is itself exempt under certain provisions (such as a wholly owned subsidiary of a corporation that qualifies as a large operating company).

What Information must be Reported

All non-exempt business entities (referred to as "reporting companies") must submit a Beneficial Ownership Information ("BOI") report to FinCEN containing identifying information for each of its beneficial owners. A "beneficial owner" is an individual who, directly or indirectly, exercises substantial control over an entity or owns or controls at least 25% of the ownership interest of the entity. An individual exercises substantial control over a reporting company if the individual is a senior officer of the company (such as the CEO, CFO, COO, or president), has the authority to appoint or remove senior officers or a majority of the Board of Directors, or otherwise directs, determines or influences important decisions. Ownership interest is defined broadly to include stock, equity, capital or profit interests, and any other instrument, contract, arrangement or understanding used to establish ownership. Note that the CTA requires the identification of people, not other entities, as beneficial owners and company applicants.

In addition, a reporting company formed on or after January 1, 2024, must also report information on each company applicant. A "company applicant" is an individual who directly files the formation documents for a reporting company, and, if different, the individual who is primarily responsible for directing or controlling the filing of the formation documents. This will apply to attorneys, CPAs, other service providers, and their staff who actually perform or oversee the filing of formation documents for newly created entities.

For the reporting company itself, the BOI Report must include the following information:

- Full legal name of the reporting company;
- Any trade name or "doing business as" ("d/b/a") name;
- The principal place of business address;
- The state of formation; and
- The IRS Taxpayer Identification Number (TIN) (including an Employer Identification Number (EIN)).

The BOI report must also include the following information for each beneficial owner and company applicant:

(i) Full legal name;

(ii) Date of birth;

(iii) Current residential address (or business address for a company applicant);

(iv) Driver's License or Passport number; and

(v) A copy of the individual's driver's license or passport.

Company applicants and individuals that own multiple business entities can submit the required information to FinCEN and be issued a unique FinCEN ID number that can be included in BOI reports rather than their actual personal information.

In the event any reported information changes after the filing of a BOI report, the reporting company must file an updated report within 30 days of such change. Such updates include not only changes in ownership and individuals in control, but also address and name changes.

When to File Reports

Reporting companies created or registered prior to January 1, 2024, have until December 31, 2024, to file an initial BOI Report. New entities created on or after January 1, 2024, must file an initial BOI report within 90 days of the earlier of: (i) the receipt of actual notice that its creation or registration has become effective or, (ii) the date on which a Secretary of State provides public notice that the reporting company has been created or registered. Originally, the deadline for newly formed entities to file a BOI report under the CTA was 30 days, but FinCEN extended this to 90 days for any entities formed in 2024. For entities formed in 2025 or later, the deadline will be 30 days.

As noted previously, updated reports must be filed within 30 days of any change in the beneficial ownership information of the company.

Penalties for Violating the CTA

Individuals who willfully fail to timely file a beneficial ownership report or willfully provide false information to FinCEN may be subject to civil and criminal penalties. Each violation of the CTA can result in a civil penalty of up to $500 per day, up to $10,000, and up to two years of imprisonment. There is, however, an exemption from civil and criminal liability if an individual voluntarily and promptly corrects an inaccurate report no later than 90 days after submission. For the exemption to apply, such person must not have intentionally submitted an inaccurate report to evade reporting requirements and must not have had actual knowledge that the reported information was inaccurate.

How to File

BOI Reports must be submitted electronically through an online portal available on FinCEN's website: https://www.fincen.gov/boi. This website also provides a link for obtaining a FinCEN ID number, and additional resources and information about the BOI reporting obligations.

Don't be Scammed!

There have been a number of recent attempts by scammers to fraudulently solicit information from entities and individuals that may be subject to the CTA's reporting requirements. Scammers will typically send an email or letter claiming to be from FinCEN and asking the recipient to scan a QR Code or click a URL to comply with CTA reporting requirements. **FinCEN does not send unsolicited information requests**. If you or your business receives any such email or letter, **IT IS FRAUDULENT,** and you should not send any response or interact with any URL or QR code included in the correspondence.