

Beneficial Ownership Information Companies Must File Their BOI Reports Before Time Runs Out!

There are less than 60 calendar days until the deadline for existing entities to file their beneficial ownership interest (“BOI”) reports to comply with requirements under the federal Corporate Transparency Act (“CTA”). The CTA requires that a BOI report (“BOI Report”) be filed by 1) nonexempt limited liability companies (“LLCs”), corporations, partnerships and any entity that is formed by filing a document with a secretary of state, and 2) foreign entities qualified to do business in any state. Nonexempt companies formed in 2023 or earlier must file their BOI Report by December 31, 2024.

There are civil and criminal penalties for missed filings. Civil penalties are \$591 for each late day. Willfully failing to file a BOI Report or willfully providing false information on a BOI Report can result in a criminal fine of up to \$10,000 and/or two years imprisonment. Penalties can apply to beneficial owners and/or to the officers of the company, depending on the type of violation.

On March 1, 2024, a federal district court held that the CTA is unconstitutional. The court only enjoined enforcement with respect anyone involved in the case, so the CTA continues to apply for all other companies. The decision is being appealed, and new lawsuits have been filed, but the litigation process could take several years.

The BOI Report discloses information about the company, such as its address and EIN, and its beneficial owners. The company must provide information about each beneficial owner, including an image of their driver’s license or passport.

Beneficial Owners

Beneficial owners are all of the individuals who 1) own 25 percent or more of the equity in the company or 2) directly or indirectly exercise “substantial control” over the company. Individuals with substantial control can include the manager of an LLC, the directors on the board, and the officers of a corporation (such as the CEO and CFO). Determining beneficial ownership can be tricky if there are multiple tiers of entity ownership between a company and its individual owners. Further, beneficial ownership of a trust’s interest in a company is particularly dependent on the facts and circumstances regarding control by the grantor, the trustee, and/or beneficiaries over the trust.

If beneficial owners do not want to provide their driver’s license or passport to the company, any person is able to obtain a FinCEN ID number at <https://fincenid.fincen.gov/>, which can be used in the BOI Report in lieu of all personal information. We recommend that beneficial owners operating in the private equity-backed space or those involved with companies with complex organization charts obtain FinCEN ID numbers.

Newly-Formed Entities

For companies formed in 2024, the initial BOI Report is due within 90 days of formation. Beginning in 2025, the report for new entities will be due within 30 days of formation. In addition to the other requirements, newly-formed companies will also need to obtain and report information for up to two “company applicants” or those people who are directly responsible for forming the company with the state. This is typically the attorney and the corporate service provider who file the formation document with the state, and those individuals likely will provide you with a unique FinCEN ID number in lieu of their personal identification.

Exemptions

While there are several exemptions from the BOI reporting obligations under the CTA, the only possible exemption for most businesses is for large operating companies 1) with at least 20 full time employees, 2) more than \$5 million in gross receipts or sales in the prior taxable year, and 3) a physical presence in the United States. FinCEN recently clarified that the company must own or lease the location, and that the office must be separate from the place of business of unaffiliated companies.

There is an exemption for inactive entities. However, it is very difficult to qualify for this exemption. An inactive entity must have been formed before January 1, 2020, must not have an active business, must not own any assets, must not be foreign-owned and, in the last calendar year, must not have sent or received funds over \$1,000 or experienced a change in owners.

Filing BOI Reports

Companies can prepare and file BOI Reports on their own online at <https://boiefiling.fincen.gov/>. Certain corporate service providers are also filing BOI Reports for modest fees. In addition, some accountants may file the BOI Report. Forchelli Deegan Terrana LLP (“FDT”) is assisting clients with their BOI reporting obligations, especially in terms of examining if an exemption may apply and in situations with complex ownership structures.

Continuing Obligations

After the initial BOI Report, companies must also file an updated BOI Report for any changes to the information in the initial BOI Report, such as changes to the company’s name or address, or to the beneficial owners of the company. FDT will be providing guidance on BOI Report changes in early 2025.

Disaster Relief

For companies principally located in current FEMA disaster areas (e.g., Florida, the Carolinas, Georgia and Texas), all initial or change BOI Report deadlines that fall between date ranges applicable to each of the recent hurricanes have received automatic six-month extensions to file their BOI Reports.

Conclusion

If you have questions regarding whether your company is exempt from filing or whether an individual is a beneficial owner, FDT can provide legal advice on how to proceed. We have been closely following the CTA, regulations, and developments in the area.

Companies should ensure that their ownership tables are up to date so that the beneficial owners can be determined. We also recommend that companies review and potentially update their operational documents to ensure that all beneficial owners cooperate with the company in providing their personal information.

This article was written by [Rachel L. Partain](#), a partner in the firm's [Corporate and Mergers & Acquisitions](#) practice group. Should you need assistance with CTA compliance or your company's organizational documents, please reach out to a partner in our [Corporate Department](#) or call 516-248-1700.



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