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VIA EMAIL

Memorandum

To: All Clients with an Ownership Interest in a U.S. Business
Re: **Important Alert** – Federal Court Grants Temporary Injunction Against the
Corporate Transparency Act’s Reporting Requirements for U.S. Businesses

Dear Clients:

As the year comes to a close, I’d like to remind you about a recent reporting requirement enacted for many businesses operating in the United States, and also provide you with a significant new update regarding your responsibility to be in compliance with such requirement.

As you might already be aware, in an attempt to enhance transparency and guard against and mitigate illicit activity, including, but not limited to, tax fraud, terrorism, and money laundering using shell companies and purposely evasive ownership structures, the **Corporate Transparency Act (“CTA”)**, which was initially enacted by Congress in January 2021, went into law earlier this year on January 1, 2024.

The CTA requires companies formed or registered in the United States to disclose the names of the individuals who own or control the entity, and requires certain entities to file a **Beneficial Ownership Information (“BOI”)** report with the **Financial Crimes Enforcement Network (“FinCEN”)**, a division of the U.S. Department of the Treasury. If you determine that you are required to file a BOI report, under certain circumstances, you may also be required to report the company applicant information.

Initially, the purpose of this memo was to help ensure you and your business(es) were in proper compliance before the upcoming **filing deadline of January 1, 2025 to potentially avoid severe penalties associated with violating the requirement**, but due to recent developments, **this may no longer be necessary**.

On December 3, 2024, the U.S. District Court for the Eastern District of Texas issued a nationwide **preliminary injunction temporarily prohibiting the Federal Government from enforcement of the reporting requirements to FinCEN under the CTA**. The Court held in *Texas Top Cop Shop, Inc., et al. v. Garland, et al.* that the CTA’s BOI reporting requirements were likely unconstitutional. As a result of this decision, **FinCEN is currently prohibited from enforcing any of the CTA’s penalties for noncompliance** (severe penalties which

are both civil and criminal in nature and further outlined in this memo herein). Additionally, **reporting companies need not comply with the CTA's previously mandated upcoming January 1, 2025 BOI report filing deadline**, pending further order of the Court. After this ruling came out, as anticipated, on December 5, 2024, the Department of Justice, on behalf of the Department of the Treasury, filed a Notice of Appeal. Reporting companies may still continue to file such reports on a voluntary basis.

Since the reporting deadline was coming up, I was hopeful that FinCEN would address this publicly to provide additional guidance, and now it has put out an official statement, which states, in part:

“In light of a recent federal court order, reporting companies are not currently required to file beneficial ownership information with FinCEN and are not subject to liability if they fail to do so while the order remains in force. However, reporting companies may continue to voluntarily submit beneficial ownership information reports.”

While FinCEN states they will comply with this order as long as it remains in effect, until we have a permanent ruling, it is clear that an attempt will be made to do whatever possible to continue with the CTA BOI reporting requirement. In light of the continuing uncertainty, since we don't know what the permanent outcome will be, when another decision will be made, how long this may be tied up in future litigation, or what filing timeline will be implemented should the injunction be lifted and the reporting requirement be reinstated, I think **it is prudent for reporting companies to familiarize themselves with what exactly the CTA BOI reporting requirement is and continue to gather the information to complete the BOI reports so that they can be fully prepared to act quickly to timely file if/when this injunction is lifted.** Please also be mindful to keep yourselves informed about this ongoing situation so that you may be in proper compliance should the injunction be lifted.

Prior to the ruling on December 3, 2024, there was a lawsuit in Federal Court in Alabama where the CTA was declared unconstitutional, however, the ruling only applied to the Plaintiffs in that specific case and was not broadly applied. Due to the Alabama case and this most recent Texas case, I am hopeful we will see the CTA BOI reporting requirement be struck down on a permanent basis, but until such time, we are in a wait and see mode.

Please let this courtesy memo serve as a general information guide summarizing the key components of this reporting requirement to help ensure you and your business(es) are in proper compliance if/when the requirement is reinstated. **Please note that in this memo I am including the deadline dates and requirements for reporting as originally provided by the CTA and FinCEN, which may now change pending further litigation.** I am also including some helpful FinCEN website links throughout this memo, as well as in a separate section at the bottom.

Who is Impacted?

Many entities (e.g., corporations, LLCs, LPs, etc.) are subject to this reporting requirement, and these companies are known as reporting companies.

What is a Reporting Company?

There are two types of reporting companies:

- **Domestic Reporting Companies** – corporations, LLCs, and other entities created by the filing of a document with the Secretary of State or similar office within the United States. Sole practitioners, single member LLCs, small business corporations, and middle market businesses are included in this requirement.

- Foreign Reporting Companies – entities, including corporations and LLCs, formed under the law of a foreign country that is registered to do business in any state in the United States or tribal jurisdiction by the filing of a document with the Secretary of State or similar office.

Who is Exempt?

There are twenty-three (23) categories of entities which are specifically exempt from the reporting requirements (some are already subject to regulation), including, but not limited to:

- Large operating companies with a U.S. presence (e.g., more than 20 full-time employees, more than \$5 million in gross receipts or sales in the previous year, etc.);
- Broker or dealer in securities;
- Banks;
- Certain companies registered with the Securities and Exchange Commission;
- Venture capital fund advisors;
- Accounting firms;
- Insurance companies;
- Pooled investment vehicles;
- Tax-exempt entities;
- Inactive entities;
- Companies whose ownership interests are controlled or wholly owned, directly or indirectly, by one or more entities that themselves qualify for certain exemptions (subsidiary exemption); however, if an entity is owned by another entity, and each entity meets the requirements for a reporting company and does not meet the requirement for one of the twenty-three (23) exemptions, they will each be required to file a BOI report.

For your convenience, I am enclosing a full list of all of the twenty-three (23) exemptions with this memo. You can also find more information on these exemptions at the FinCEN FAQ website link referenced here below (along with other helpful links referenced elsewhere in this memo):

FinCEN BOI FAQ Page: <https://www.fincen.gov/boi-faqs>

Reporting Requirements and Timelines to File a BOI Report

A reporting company must disclose information about the reporting company, its beneficial owners, and, for companies formed on or after January 1, 2024, a maximum of two company applicants.

Timelines to File:

- Any domestic or foreign reporting company created prior to January 1, 2024 must file a BOI report no later than **January 1, 2025**;
- Any domestic or foreign reporting company created on or after January 1, 2024, but before January 1, 2025, must file a BOI report **within 90 calendar days** of receiving notice of their registration or creation, or after a Secretary of State (or similar office) first provides public notice of its creation or registration, whichever is earlier;
- Any domestic or foreign reporting company created on or after January 1, 2025 must file a BOI report **within 30 calendar days** of receiving notice of their registration or creation, or after a Secretary of State (or similar office) first provides public notice of its creation or registration, whichever is earlier.

Important to Note:

Companies that have been officially dissolved prior to January 1, 2024 do not need to file a BOI report, but companies that are either:

- a. In the process of being dissolved in 2024, but have not yet formally completed the dissolution; or
- b. Became formally dissolved after January 1, 2024

are *still required to file* a BOI report for such company.

How Do you File a BOI Report?

To file directly, you can go to the *FinCEN BOI Filing Page* located here: <https://boiefiling.fincen.gov/>.

I am also including a link to the *FinCEN Video Demo - How to File a BOI Report:*

<https://www.youtube.com/watch?v=GydCyfbKxPw&t=1s>

What Specific Information is Required to be Reported?

Reporting Company Required Information:

The reporting company is required to report the following information about itself:

- Its full legal name and any alternative names through which it engages in business (e.g., trade names or “doing business as” names);
- A complete current street address for a reporting company with a principal place of business in the United States or the street address of the primary location in the United States where the reporting company conducts business;
- The jurisdiction of its formation or registration (state, tribal, or foreign jurisdiction); and
- IRS Taxpayer Identification Number (“TIN”), including an Employer Identification Number (“EIN”), or, in the case of a foreign reporting company that has not been issued such number, a tax identification number issued by a foreign jurisdiction and the name of the foreign jurisdiction.

Beneficial Owner Required Information:

- Full legal name;
- Date of birth;
- Current residential address;
- Unique identifying number from an acceptable identification document (e.g., valid passport, valid U.S. ID or driver’s license, or, if the individual lacks all of these documents, a valid foreign passport); and
- Scanned image of the document used which includes the unique identifying number on it.

Company Applicant Required Information (for companies formed on or after January 1, 2024):

For each individual that is deemed a company applicant, a reporting company will have to provide the following information:

- The individual's name;
- Date of birth;
- Business or Residential address; and
- An identifying number from an acceptable identification document such as a passport or U.S. driver's license, and the name of the issuing state or jurisdiction of identification document. The reporting company will also have to provide an image of the identification document;

You may also request a **unique FinCEN ID** to use when filling out the BOI report in lieu of using the beneficial owner's personal information (though to obtain a FinCEN ID, you would still need to register with FinCEN and provide this information in order to get the FinCEN ID to use on the BOI report, but the personal information would not be publicly available).

Who Will Have Access to this Information?

FinCEN has attempted to put protections in place to guard the submitted information, and has stated that access to the information in the filed report is confidential and will not be made publicly available or accessible. Additionally, FinCEN does not plan to have any search functionality to determine which entities have submitted a report. The CTA imposes strict access requirements and safeguards on each group of requesters and only authorized FinCEN to disclose beneficial ownership information to the following recipients in certain specific circumstances:

- **Federal agencies** for use in furtherance of nation security, intelligence, and law enforcement;
- **Federal, State, local, and Tribal law enforcement** agencies for use in criminal or civil investigations;
- **Foreign law enforcement agencies**, judges, prosecutors, etc. who submit a request through a U.S. Federal government agency for authorized activities related to national security, intelligence, or law enforcement activities (and the request meets certain strict criteria);
- **Financial institutions** will also have access to beneficial ownership information in certain circumstances, provided the financial institution has the consent of the reporting company;
- **Regulators of those financial institutions** will also have access to beneficial ownership information when they supervise the financial institutions.
- **Treasury officers and employees** for tax administration purposes or whose official duties require such access.

Who is a Beneficial Owner?

Generally speaking, a beneficial owner is any individual who, directly or indirectly:

- Owns or controls at least twenty-five percent (25%) of the ownership interests of a reporting company; or
- Exercises substantial control over a reporting company (e.g. senior officers, etc.).

An individual might be a beneficial owner through substantial control, ownership interests, or both. Reporting companies are not required to report the reason (substantial control vs. ownership interests) that an individual is a beneficial owner.

You can find more detailed information on beneficial owners (and other related topics discussed herein) provided by FinCEN using the *FinCEN Small Entity Compliance Guide* found here (specifically chapter 2 for beneficial owner information): <https://www.fincen.gov/boi/small-entity-compliance-guide>

What is a Company Applicant and Does My Company Have to Report its Company Applicants?

A company applicant is:

- The individual who directly files the document that creates, or first registers, the reporting company; and/or
- The individual that is primarily responsible for directing or controlling the filing of the relevant document.

A reporting company can have a maximum of two (2) company applicants. If only a single person was involved in preparing and filing the relevant document, then only that person should be reported as a company applicant. Only reporting companies formed or registered on or after January 1, 2024 will have to report their company applicants.

Penalties for Reporting Violations

The reporting company is responsible for ensuring the information provided is true, correct, and complete. It is a violation of the CTA for any person (which could be the reporting company, any individual, or any other entity) to willfully provide, or attempt to provide, false or fraudulent information on the BOI report. Potential violations include **willfully failing to file a beneficial ownership information report, willfully filing false beneficial ownership information, or willfully failing to correct or update previously reported beneficial ownership information.** So, while the reporting company itself (and not its beneficial owners or any other party) is responsible for reporting required information to FinCEN, individuals or other entities may violate the CTA where that individual or entity causes the reporting company to fail to satisfy its reporting obligations.

A person who willfully violates the BOI reporting requirements may be subject to both civil and criminal penalties, including, but not limited, to:

- Civil penalty of \$500 per day for each day the violation continues;
- Fine of up to \$10,000.00 and/or imprisonment for up to two (2) years;

Is the BOI Filing an Annual Filing?

The BOI report is not an annual report. As of right now, only an initial report is required; however, a reporting company **must file an updated BOI report** if there is any change to the required information about the reporting company or its beneficial owners in a filed initial BOI report. An **updated/corrected BOI report must be filed no later than 30 days** after becoming aware of, or of when it should know of, any change or inaccuracy in the information about the company or its beneficial owners on a filed BOI report (e.g., new business name, change in beneficial owners, change in address, change in unique identifying number previously used in the filing, basic correction of improperly filed information, loss of status as a reporting company under the CTA exemptions, etc.). A reporting company is not required to file an updated or corrected BOI report if information about a company applicant changes.

NY LLC ACT

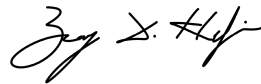
NY has its own new reporting requirement similar to the CTA, known as the NY LLC Act. It only deals specifically with LLCs, but it is not scheduled to go into effect until 2026. While the NY LLC Act is modeled after the CTA, there are some slight differences (e.g., if an LLC qualifies for an exemption under the CTA, it also is exempt from the disclosure requirements of the NY LLC Act, but the NY LLC Act requires a Member or Manager of the LLC to file a signed statement with the NY Department of State indicating which provision or provisions of the CTA they rely on in claiming exemption). I am hopeful that if/when we see the CTA potentially struck down in litigation on a federal level, it will have a similar impact on the NY LLC Act. For now, **keep this NY LLC Act in mind as we move closer towards 2026, and reach out to learn more about it.**

CTA/FinCEN/BOI Resource Links:

1. Main FinCEN BOI Page: <https://www.fincen.gov/boi>
2. FinCEN BOI FAQ Page: <https://www.fincen.gov/boi-faqs>
3. FinCEN BOI Filing Page: <https://boiefiling.fincen.gov/>
4. FinCEN Small Entity Compliance Guide: <https://www.fincen.gov/boi/small-entity-compliance-guide>
5. FinCEN Video Demo - How to File a BOI Report: <https://www.youtube.com/watch?v=GydCvfbKxPw&t=1s>

Should you have any questions regarding the details of the CTA BOI reporting requirement, or to schedule a consultation to help determine whether you need to file a BOI report if/when the time comes, or whether you should voluntarily file a BOI report while we await the permanent outcome being dealt with in the Texas Court, feel free to reach out to me at zhelprin@helprinlegal.com.

Very truly yours,



Zachary D. Helprin

ZDH/ds

Enclosures

1. CTA Exemptions List
2. CTA BOI Report Filing Checklist

Disclaimer: The contents of this memo shall merely be interpreted as general information on how to best protect yourself and your business, and nothing in this memo should be considered by the reader as formal legal advice or an establishment of an attorney-client relationship on this matter.

CTA BOI Reporting Exemptions

The following table summarizes the 23 types of companies which may be exempt from CTA BOI reporting requirements. You can find more complete information on these exemptions at the FINCEN website referenced in the attached letter. For questions and/or more details on these exemptions and for help understanding whether your company falls under one of these categories, please reach out to zhelprin@helprinlegal.com:

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

FinCEN CTA Checklist



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Reporting Company Required Information:

- Its full legal name
- Any trade or “doing business as” names
- A complete current address consisting of:
 - in the case of a reporting company with a principal place of business in the United States, the street address of the principal place of business, and
 - in all other cases, the street address of the primary location in the United States where the reporting company conducts business
- The state, tribal or foreign jurisdiction of formation
- For a foreign reporting company, the state or tribal jurisdiction where the company first registers
- The IRS Taxpayer Identification Number (TIN) (including an Employer Identification Number) or where a foreign reporting company has not been issued a TIN, a tax identification number issued by a foreign jurisdiction and the name of that jurisdiction

Beneficial Owner* Required Information:

- Full legal name
- Date of birth
- Current, as of the date of report, residential address
- Unique identifying number from an acceptable identification document defined as:
 - a non-expired U.S. passport;
 - a non-expired identification document issued by a state, local government or Indian tribe;
 - a non-expired driver’s license issued by a state; or
 - if the individual lacks all of the foregoing documents, a non-expired foreign passport
- Image of document the unique identifying number came from

Company Applicant Required Information:

- Full legal name
- Date of birth
- Current, as of the date of report, residential or business street address
- Unique identifying number from an acceptable identification document defined as:
 - a non-expired U.S. passport;
 - a non-expired identification document issued by a state, local government or Indian tribe;
 - a non-expired driver’s license issued by a state; or
 - if the individual lacks all of the foregoing documents, a non-expired foreign passport
- Image of document the unique identifying number came from

**A beneficial owner is an individual who, directly or indirectly, exercises substantial control over the entity or owns or controls not less than 25 percent of the ownership interests of the entity.*