

Deadline Approaching for Initial CTA Filings for Pre-2024 Companies

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Regulations promulgated pursuant to the federal Corporate Transparency Act (the “CTA”) became effective as of January 1, 2024. The CTA and its implementing regulations are intended to help prevent and combat money laundering, terrorist financing, corruption, tax fraud, and other illicit activity by requiring a “reporting company” doing business in the United States to report to the Financial Criminal Enforcement Network (“FinCEN”) limited identifying information about the company, individuals who form or register it after January 1, 2024, individuals who own 25% or more of its ownership interests and individuals who exercise substantial control over it, unless the entity meets one of the 23 exemptions under the CTA that would exempt it from the reporting requirements (see, https://www.fincen.gov/boi-faqs#C_2).

For reporting companies formed before January 1, 2024 (i.e., entities that do not meet one of the applicable 23 exemptions), the initial beneficial ownership information report must be filed by January 1, 2025. It is imperative that business owners act now to determine whether the CTA applies to their entity, and if their entity is subject to CTA reporting, then to collect the information required for the beneficial ownership information report and submit it to FinCEN before the January 1, 2025, deadline.

The potential penalties for not complying with the CTA can be significant: The willful failure to report complete or updated beneficial ownership information to FinCEN, or the willful provision of or attempt to provide false or fraudulent beneficial ownership information to FinCEN, may result in civil penalties of up to \$591 for each day that the violation continues (adjusted annually for inflation) or criminal penalties including imprisonment for up to two years and/or a fine of up to \$10,000.

Unless exempt, new companies formed between January 1, 2024, and December 31, 2024, must file their initial BOI reports within 90 days after formation. Companies formed on or after January 1, 2025, must file their initial BOI reports within 30 days after formation, unless an exemption applies. All changes to the reported information, regardless of the deadline for the initial beneficial ownership information report, must be updated within 30 days of the change.

An entity subject to reporting (a “reporting company”) must provide FinCEN the following information: (1) Its legal name; (2) Any trade names, “doing business as” (d/b/a), or “trading as” (t/a) names; (3) The current street address of its principal place of business if that address is in the United States (for example, a U.S. reporting company’s headquarters), or, for reporting companies whose principal place of business is outside the United States, the current address from which the company conducts business in the United States (for example, a foreign reporting company’s U.S. headquarters); (4) Its jurisdiction of formation or registration; and (5) Its tax identification number.

For each individual who owns 25% or more of the equity of a reporting company and each individual who exercises substantial control over a reporting company (both, “beneficial owners”), the reporting company must provide FinCEN the following information: (1) The individual’s name; (2) Date of birth; (3) Residential street

address; and (4) 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 along with an image of the identification document used to obtain the identifying number in item (4).

An individual exercises "substantial control" under the CTA if they: (1) serve as a "senior officer" of the reporting company (president, CEO, CFO, COO, GC, as well as any other person, regardless of title, who performs similar functions); (2) have authority over the appointment or removal of any senior officer or a majority of governing body of the reporting entity; (3) direct, determine, or have substantial influence over important decisions made by the reporting company; or (4) have any other form of substantial control over the reporting company.

Beneficial ownership information reports are to be filed at the following website address - <https://boiefiling.fincen.gov/fileboir>. The form can be completed online or a fillable PDF (link here) then submitted through the portal at this [link](#). The beneficial ownership information electronic filing application will provide an acknowledgement of submission success or failure, and the submitter will be able to download a transcript of the beneficial ownership information report.

While it is firm policy not to make FinCEN beneficial ownership information report filings for clients, we are available to provide advice regarding CTA reporting requirements and the process for submitting reports.