

## **THE CORPORATE TRANSPARENCY ACT OF 2021 AND THE BENEFICIAL OWNERSHIP INFORMATION REPORTING RULE**

In 2021, Congress passed the Corporate Transparency Act on a bipartisan basis. The law creates a new beneficial ownership information reporting requirement as part of the U.S. government's efforts to make it harder for bad actors to hide or benefit from their ill-gotten gains through shell companies or other opaque ownership structures.

Beginning January 1, 2024, the U.S. Treasury Department, through its Financial Crimes Enforcement Network ("FinCEN"), is requiring that certain companies report information about their beneficial owners ("Reporting Requirements"), pursuant to the Beneficial Ownership Information Reporting Rule (the "Rule"). This article addresses some basic components of the Rule and the reporting requirements. However, as the Rule is complex and nuanced, please contact us for further questions regarding the application of the Rule to your business.

### **A. What Companies Are Subject to the Reporting Requirements?**

The Rule applies to (i) **domestic reporting companies** (corporations, limited liability companies, and any other entities created by the filing of a document with a secretary of state or any similar office in the U.S.) and (ii) **foreign reporting companies** (corporations and limited liability companies, formed under the laws of a foreign country that have registered to do business in the U.S. by the filing of a document with a secretary of state or any similar office)(collectively, "Reporting Companies").

However, there are certain entities that are exempt from the Reporting Requirements. The Rule contains 23 specific exemptions, many of which apply to companies that are already required to report similar information. In addition, other factors, such as whether the company is inactive or the size of the entity may exempt it from the Reporting Requirements (e.g., large companies (those that are based in the U.S. with more than 20 employees and more than \$5 million in gross receipts)). Please contact us to assist you in determining whether your company is a Reporting Company.

### **B. What Information Must an Reporting Company Report?**

A Reporting Company must file a Beneficial Owner Information Report ("BOI Report"), which may include the following (depending upon when the Reporting Company was created):

#### **1. Information About the Company**

- Its legal name
- Any trade names, "doing business as" (d/b/a), or "trading as" (t/a) names
- 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)

- Its jurisdiction of formation or registration
- Its Taxpayer Identification Number (or, if a foreign reporting company has not been issued a TIN, a tax identification number issued by a foreign jurisdiction and the name of the jurisdiction).
- Whether it is filing an initial report, or a correction or an update of a prior report.

## **2. Information About Beneficial Owners**

A “Beneficial Owner” is an individual who either directly or indirectly: (a) exercises “substantial control” over the reporting company, or (b) owns or controls at least 25% of the Reporting Company’s ownership interests.

An individual can exercise “substantial control” over the Reporting Company in one of the following four ways: (a) the individual is a senior officer (the company’s president, CFO, general counsel, CEO, COO, or any other officer who performs a similar function); (b) the individual has authority to appoint or remove certain officers or a majority of directors (or similar body) of the Reporting Company; (c) the individual is an important decision-maker for the Reporting Company or (d) the individual has any other form of substantial control over the Reporting Company.

Again, however, there are exemptions for certain individuals who would otherwise be defined “Beneficial Owners” who the Reporting Company does not need to disclose. For each individual who is a “Beneficial Owner” who the Reporting Company must disclose, a Reporting Company must provide the following:

- The individual’s name
- Date of birth
- Residential address
- 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
- An image of the identification document used to obtain the identifying number.

## **3. Information About Company Applicants**

For entities created or registered after January 1, 2024, the Reporting Company must also identify up to two “Company Applicants,” which are (a) the individual who directly files the document that creates or registers the company and (b) if more than one person is involved in the filing, the individual who is primarily responsible for directing or controlling the filing.

### **C. What Are the Mechanics of Filing the BOI Report?**

The BOI Report will be filed electronically through a secure filing system available via FinCEN’s website, which is currently being developed. The form to report beneficial ownership information is not yet available. There are no fees associated with the filing.

**D. When Must the BOI Report Be Filed?**

Reporting Companies in existence as of January 1, 2024 must file their initial BOI Reports by January 1, 2025. Reporting Companies formed after January 1, 2024 but before January 1, 2025 must file their initial BOI Reports within 90 calendar days from the time the company receives actual notice that its creation or registration is effective, or after a secretary of state or similar office first provides public notice of its creation or registration, whichever is earlier. receiving actual or public notice that its creation.

Reporting Companies created or registered on or after January 1, 2025, must their initial BOI Reports within 30 calendar days after receiving actual or public notice that their creation or registration is effective.

**E. What if Things Change at the Reporting Company?**

Changes to any of the information required to be included in the BOI Report must be updated within 30 days of the change occurring.

**F. Who Will Have Access to the Information in the BOI Report?**

Government officials, as well as certain foreign officials who submit a request through a U.S. federal agency, may obtain BOI Reports for "authorized activities related to national security, intelligence, and law enforcement." Some financial institutions may be granted access to BOI Reports as well, but only in in circumstances where the Reporting Company consents.

**G. What if a Reporting Company Fails to File the BOI Report or Fails to Accurately Disclose Information?**

If the failure is willful, potential civil or criminal penalties, including civil fines of up to \$500 for each day that the violation continues, or criminal penalties including imprisonment for up to two years and/or a fine of up to \$10,000. Senior officers of an entity that fails to file a required BOI report may be held accountable for that failure.

This material is for informational purposes only based on information available at the time of writing and does not constitute legal advice. If you have any questions regarding these new laws and applicability to your business, please contact:

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