

FinCEN to Extend Initial Reporting Deadline for the Corporate Transparency Act

Corporate News: A Legal Update

By Karen Tobin on September 28, 2023

The U.S. Department of Treasury's Financial Crimes Enforcement Network ("FinCEN") published a Notice of Proposed Rulemaking on September 27, 2023 to amend the final Beneficial Ownership Information ("BOI") Reporting Rule to extend the deadline from 30 to 90 days following formation or registration for reporting companies created on or after January 1, 2024 to file BOI reports. The purpose of requiring BOI reports, which disclose companies' beneficial owners to law enforcement agencies, is to help them combat money laundering and other crimes. The purpose for this extension of the filing deadline is to provide additional time for reporting companies to understand the reporting rules and, in turn, increase compliance.

This extension is currently the only proposed change to the BOI reporting requirements, and the extended reporting deadline of ninety (90) days for newly formed or registered reporting companies to disclose their beneficial owners lasts only during 2024. On or after January 1, 2025, newly formed or registered reporting companies will only have 30 days to comply with the BOI Reporting Rule. Companies formed before January 1, 2024 will still be required to file BOI reports between January 1, 2024 and January 1, 2025 (a one-year filing window). Also, companies with changes in beneficial ownership after they have filed BOI reports must still file amendments to their BOI reports within thirty (30) days after the changes occur.

We encourage companies to review the Small Entity Compliance Guide published by FinCEN to understand their responsibilities regarding the Corporate Transparency Act ("CTA"), to determine who their beneficial owners are, and who their company applicants (such as attorneys and paralegals who form reporting companies after January 1, 2024) are, and to begin gathering all required information in order to meet their reporting compliance deadlines.

Reporting Companies. The CTA provides that a domestic reporting company is a corporation, limited liability company, limited partnership, or other similar entity created by a filing with the Secretary of State or other similar office. A foreign reporting company is a corporation, limited liability company or other similar entity that is created in a foreign country and qualified to do business in the United States. The CTA provides 23 exemptions to the definition of a reporting

company. These exemptions, in general, are for entities that are already subject to extensive reporting requirements. A reporting company must provide its full legal name, any tradename or “doing business as” name, complete address of the principal place of business, jurisdiction of formation, and taxpayer identification number.

Beneficial Owners. The CTA defines a beneficial owner as any individual who directly or indirectly (through contract, arrangement, understanding, relationship or otherwise) either (1) exercises substantial control over a reporting company or (2) owns or controls 25% or more of the ownership interests in a reporting company. For each of its beneficial owners, a reporting company must provide his or her full name, date of birth, residential address(es), and a unique identification number such as from an unexpired driver’s license or unexpired passport, and must upload a color copy of such document with the report.

We also recommend that companies review their governing documents such as shareholder agreements, operating agreements and other contracts with senior executives to add provisions to hold beneficial owners accountable for complying with CTA reporting obligations. Companies may want their beneficial owners to indemnify them and their other beneficial owners for any losses due to their causing the company not to comply with the CTA.

The CTA provides civil and criminal penalties for any person who willfully provides or attempts to provide false or fraudulent information, including false or fraudulent documentation, or fails to report complete or updated information. Such penalties include fines of up to \$500 per day for each violation, up to \$10,000 in total fines, and up to two years in prison.

FinCEN to
Extend
Initial
Reporting
Deadline for
the
Corporate
Transparency
Act