

ALERT

The Corporate Transparency Act's Reporting Requirements Are Finally Here: What Do They Mean for Your Business?

January 8, 2024

To combat money laundering and other illicit activities via the use of shell companies, Congress passed the 2021 Corporate Transparency Act (CTA), which requires most U.S. businesses (and certain foreign businesses), regardless of industry, to report beneficial ownership information to the federal government.

Since the CTA was initially passed, the Financial Crimes Enforcement Network (FinCEN), a bureau of the U.S. Treasury, has worked to promulgate rules that would implement and clarify the CTA's requirements. On September 30, 2023, FinCEN adopted a final rule, the Beneficial Ownership Information Reporting Rule (hereinafter, "Rule"), which implements the CTA.

In a nutshell, the Rule requires certain U.S. and foreign businesses to file Beneficial Ownership Information Reports (BOIRs) regarding their beneficial owners and, in some instances, their company applicants. The Rule addresses which businesses must file BOIRs, what information they must report in a BOIR, and the deadlines for BOIRs. The Rule's requirements are summarized further below.

For more information, FinCEN has drafted a CTA Compliance Guide, which can be found [here](#).

Who?

An entity must file a BOIR if it meets the definition of a reporting company and does not qualify for an exemption.

Authors

Vesna K. Harasic-Yaksic
Partner
202.719.4506
vharasic-yaksic@wiley.law

Practice Areas

Corporate
International Trade
Privacy, Cyber & Data Governance
Securities Enforcement and Litigation
Telecom, Media & Technology
White Collar Defense & Government Investigations

Reporting companies fall under two categories: domestic and foreign reporting companies. A domestic reporting company is a corporation, limited liability company, or other entity that is created by the filing of a document with a secretary of state or similar office. Depending on the laws of the state of formation, certain partnerships may be considered reporting companies under the CTA. A foreign reporting company is a corporation, limited liability company, or other entity formed under the law of a foreign country *and* registered to do business in the United States by the filing of a document with a secretary of state or similar office.

There are 23 exemptions under the Rule, many of which apply to large, regulated companies. For example, exemptions apply for SEC reporting companies; entities subject to government regulation, such as banks, credit unions, insurance companies, or money services businesses; and large operating companies (that is, companies with (1) at least 20 full-time employees in the U.S., (2) a physical office in the U.S., and (3) previously filed federal income tax returns showing more than \$5 million in gross receipts or sales).

What?

First, the Rule requires all reporting companies to identify, and provide certain information about, beneficial owners – defined as individuals who, either directly or indirectly, (1) own or control at least 25% of the ownership interests of a reporting company, or (2) exercise “substantial control” over the reporting company. As to the latter, FinCEN advises that an individual wields substantial control over a reporting company if he or she meets any of the four general criteria: (1) the individual is a senior officer; (2) the individual has authority to appoint or remove certain officers or a majority of directors of the reporting company; (3) the individual is an important decision-maker; or (4) the individual has any other form of substantial control over the reporting company.

Although there are certain exceptions to the definition of a beneficial owner, such as minors and inheritors, the definition covers a wide range of circumstances. On one end, it covers individuals who have *no ownership interest whatsoever* in a reporting company but have substantial authority over the reporting company’s business operations. On the other end, it covers individuals who have a substantial ownership interest but who are not actively involved in the business’s affairs.

Second, the Rule requires reporting companies created or registered after January 1, 2024, to identify and provide certain information about company applicants. A company applicant is defined as an individual who directly files or is primarily responsible for directing or controlling the filing of the document that creates or registers the reporting company. Such a definition would include lawyers that assist their clients with forming new businesses.

For each beneficial owner and company applicant, the Rule requires the reporting company to provide the following details, among others: (1) full legal name; (2) date of birth; (3) current residential address; and (4) a unique identification number from a valid identification document, such as a passport or driver’s license.

A person submitting a BOIR to FinCEN must certify that the information contained within the BOIR is true, correct, and complete.

When?

FinCEN began accepting BOIRs on January 1, 2024. Reporting companies that already existed as of January 1, 2024, will have a full year – until January 1, 2025 – to file their initial BOIRs.

Reporting companies created or registered this year – after January 1, 2024, but before January 1, 2025 – must file their initial BOIRs within 90 days after receiving actual or public notice that their creation or registration is effective.

Reporting companies created or registered next year – after January 1, 2025 – must file their initial BOIRs within 30 days after receiving actual or public notice that their creation or registration is effective.

Reporting companies that experience changes in their beneficial ownership information are required to amend their BOIRs no later than 30 days after the date on which the changes occurred.

Reporting companies that identify any inaccuracies in their filed BOIR must correct those inaccuracies no later than 30 days after the date they became aware of the inaccuracy or had reason to know of it.

Where?

Like other reports aimed at preventing illicit activities, such as Suspicious Activity Reports or Currency Transaction Reports,[1] the Rule requires small businesses to file a BOIR with FinCEN. FinCEN has created a website, the BOI E-Filing System, which allows reporting companies to electronically file their BOIRs. There is no fee associated with filing a BOIR. BOIRs cannot be mailed, faxed, or emailed to FinCEN.

Why (Does this Matter)?

An individual or entity that “willfully” fails to file (or update) a BOIR, or provides false information on a BOIR, may face civil penalties of up to \$500 per day or criminal penalties, including imprisonment for up to two years and/or a fine of up to \$10,000. This not only places a continuous obligation on reporting companies to update BOIRs when changes occur, but also exposes those reporting companies, their beneficial owners, and their certifying individuals, to civil or criminal penalties when they fail to correct information that becomes inaccurate – even if that information is innocuous. By way of example, a mere address change for any senior official of a reporting company will trigger an update obligation. Thus, the burden of compliance may become significant, and reporting companies must ensure that they enact procedures to collect and file accurate personal identifying information and adequately monitor any changes in beneficial ownership information.

[1] These reports are only required for certain financial institutions.