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Corporate Transparency Act

Provided by MHA's Legal Counsel

The United States Congress enacted the Corporate Transparency Act (CTA) in 2021, to enhance corporate transparency and combat financial crimes. Beginning in 2024, many small businesses are required to report information about their beneficial owners to the Financial Crimes Enforcement Network (FinCEN) to create a national database for use by national security and law enforcement agencies to prevent the use of shell companies for criminal activity.

Who Must File. Domestic and foreign "reporting companies" are required to file beneficial ownership information (BOI) reports. A company is considered a reporting company if a document was filed with a state or foreign office to form or register the entity. In Wisconsin, this filing generally would be with the Wisconsin Department of Financial Institutions (DFI); in other states, it often would be the secretary of state's office. Corporations (whether C or S corporations), LLCs (including single-member LLCs), and other entities formed through DFI or a similar office are subject to the reporting requirements. Sole proprietorships, general partnerships, and trusts that do not require a filing with DFI or a similar office in connection with their formation are generally not considered reporting companies and would not have to report BOI. Foreign companies (i.e., those formed outside of the U.S.) are required to file reports if they are registered with DFI or similar office under state law.

Exemptions. Certain companies are exempt from reporting, but many of the exempted companies are already required to report ownership information to a governmental authority. One significant exemption is for "large operating companies," which are any entities with (a) more than 20 full-time US employees, (b) an operating presence at a physical office within the US, and (c) more than $5,000,000 of US-sourced gross receipts reported on its prior year federal income tax return. For a full list and description of the 23 types of entities exempt from BOI reporting, see https://www.fincen.gov/boi-faqs#C_2.

INACTIVE OR RECENTLY DISSOLVED COMPANIES STILL MAY NEED TO REPORT BOI. If you have an entity that has been inactive or recently dissolved, it still may need to file a BOI report. An inactive or dissolved company must meet all of six qualifiers to be exempt from reporting BOI to FinCEN. You can review the criteria for the inactive entity exemption at https://www.fincen.gov/boi-faqs#L_2.

Information to Report. BOI must be reported for the reporting company's "beneficial owners," regardless of when the entity was formed. For entities formed or registered after 2023, BOI of "applicants" also must be reported.

BOI includes an individual's full legal name, date of birth, street address, and a unique ID number. This ID number can be from a non-expired US passport, state driver's license, or other government-issued ID card. If the individual does not have any of those documents, then a non-expired foreign passport can be used. An image of the document showing the unique ID number must be included with the report.

FinCEN Identifiers. Individuals and also reporting companies can request a FinCEN Identifier (FinCEN ID) to use to report BOI. A FinCEN ID is a unique number assigned by FinCEN, obtained by submitting to FinCEN the same information as is required of a beneficial owner, applicant, or reporting company. A FinCEN ID may be useful to those who prefer to send their personal information directly to FinCEN rather through the reporting company or who may be required to supply information as a beneficial owner or company applicant of several reporting companies. You can begin the process to obtain a FinCEN ID at https://fincenid.fincen.gov/landing.

Identifying Beneficial Owners. Two groups of individuals are considered beneficial owners of a reporting company: (1) any individual who directly or indirectly (such as through an entity, IRA, etc.) owns or controls at least 25% of the ownership interests of the reporting company; or (2) any individual who exercises substantial control over the reporting company (even if no ownership).

Individuals with "substantial control" are those with substantial influence over important decisions about a reporting company's business, finances, and structure. Senior officers (such as the president, CEO, CFO, COO, general counsel/chief legal officer, and any other executive officer who performs a similar function) are automatically deemed to have substantial control, as are individuals with the authority to appoint or remove senior officers and board members. Similarly, most LLC managers likely would be deemed beneficial owners due to having substantial control. There is no requirement to have actual ownership to be considered a beneficial owner for reporting purposes. The CTA's final reporting rules set out a non-exhaustive list of examples where an individual may exercise substantial control over a company.

A company can have multiple beneficial owners, and there is no maximum number of beneficial owners who must be reported. For example, a company could have multiple beneficial owners who exercise substantial control over the company (such as a President and CFO) but have no ownership and other beneficial owners who own or control at least 25% of the reporting company's ownership interests. In this example, all of the individuals exercising substantial

control and those who own or control at least 25% of the ownership interests would need to be reported.

Identifying Company Applicants. A reporting company will have a maximum of two company applicants. Company applicants are (1) the person who actually files the document that creates or registers the reporting company; and, if applicable, (2) the person who is primarily responsible for directing or controlling the filing. For example, if you use our firm to file organizational documents with DFI, the attorney or paralegal who files your documents will be considered a company applicant.

Company applicants must provide the same information that is required of beneficial owners, but only if the reporting company is formed or registered after 2023. Reporting companies formed or registered before 2024 do not have to report company applicants. You can review guidance on identifying company applicants at https://www.fincen.gov/boi-faqs#E_1.

Filing Deadlines. For existing reporting companies formed or registered before 2024, the initial report is due by January 1, 2025. For reporting companies formed or registered in 2024, the initial report is due 90 days after the entity's formation or registration. For reporting companies formed or registered after 2024, the initial report is due 30 days after the entity's formation or registration.

If there is a change to previously reported information about the reporting company or its beneficial owners, an updated report must be filed within 30 days of the change. If you are subject to the reporting requirements, we suggest that your company implement a system to identify reportable changes and file an updated report with FinCEN in a timely manner. The penalties for willfully failing to file initial or updated reports are high – in each case, a civil penalty of up to $500 per day that the report or update is late, and criminal penalties of up to two years imprisonment and a fine of up to $10,000.

Filing BOI Reports. BOI reports must be filed electronically. FinCEN's e-filing portal, available at https://boiefiling.fincen.gov/, provides two methods to submit a report: (1) by filling out a web-based version of the form and submitting it online, or (2) by uploading a completed PDF version of the BOI report. Some third-party service providers may also offer the ability to file the BOI report through their software. The person who submits the BOI report will need to provide their name and email address to FinCEN. There is no fee for filing the report directly through FinCEN's e-filing portal.

The new BOI reporting requirements are a significant change from prior law. While our firm does not intend to file BOI reports on behalf of our clients, we are able to provide you with assistance in determining your filing obligations and recommendations for reporting assistance. FinCEN also has a Small Entity Compliance Guide and responses to frequently asked questions to help guide businesses through the reporting requirements. These are available at https://www.fincen.gov/boi/small-business-resources.

BREAKING NEWS: On March 1, 2024, the U. S. District Court for the District Court of Alabama declared that the CTA is unconstitutional on the basis that it goes beyond Congress' legislative authority under the Constitution. The ruling suspends enforcement of the CTA against the plaintiffs that brought the case, including members of the National Small Business Association. On March 4, 2024, FinCEN issued a release stating that it will comply with the court's ruling as long as it remains in effect, and that it will not enforce the CTA against the plaintiffs in that action, including members (as of March 1, 2024) of the National Small Business Association. The government is expected to appeal. We will be posting updates on our Business Minute webpage as the situation develops. In the interim, we strongly encourage you to review the reporting requirements and filing requirements included in this letter.