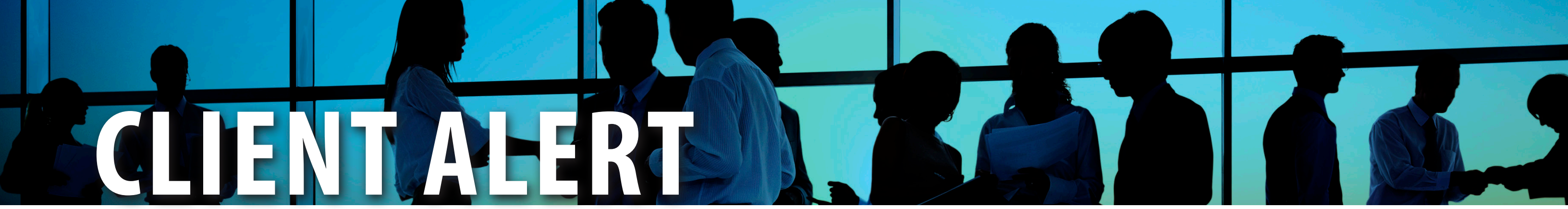


CORPORATE TRANSPARENCY ACT COMPLIANCE DATE IS APPROACHING QUICKLY

by Mark R. High

Introduction

Although the Corporate Transparency Act (the "Act") was adopted in 2021, implementation has been delayed while the Department of Treasury's Financial Crimes Enforcement Network ("FinCEN") established regulations. The deadline, however, for compliance is fast approaching. Reporting Companies (as defined) formed after January 1, 2024, will need to file reports within 30 days after formation. Reporting Companies already existing at the end of 2023 will need to make their initial reports before the end of 2024.

The Act seeks to obtain Beneficial Ownership Information ("BOI") on individuals who own substantial pieces of, or otherwise control, Reporting Companies. It is the latest effort by the federal government to combat money laundering, tax fraud, and other illegal activity by bad actors. Unfortunately, a lot of good actors will get caught in the crossfire.

Consistent with the Act's purpose, this information will be available to federal law enforcement agencies (including Treasury and the IRS), and state and local enforcement agencies with prior court approval. Foreign agencies may also ask for access to the information, either under an international treaty, or as part of certain investigative procedures. Finally, financial institutions and their regulators may obtain access for purposes of satisfying their Know Your Customer requirements. These filings will not be made available to the general public.

Definitions and Exemptions

A "Reporting Company" is an entity formed by filing a document with a secretary of state or similar office under state or tribal law. Thus, corporations, LLCs, and limited partnerships are Reporting Companies, while sole proprietorships and general partnerships would not qualify under most states' laws. Foreign entities registered to do business in the U.S. are also considered Reporting Companies under the Act.

There are a number of exemptions from the reporting requirements. Most of these cover entities already subject to oversight, such as publicly traded companies, banks and other financial institutions, investment companies, insurance companies, governmental entities, and public utilities. Most accounting firms are exempt, as are non-profits and other tax-exempt entities.

The "large operating company" exemption will cover many privately held companies. To qualify, an entity must have (1) 20 or more full-time employees located in the U.S., (2) annual revenues exceeding $5 million (as shown on its latest tax return), and (3) an office or other physical location within the U.S. (Generally speaking, shared office space does not meet that third qualification.) Most newly formed companies will not qualify for this exemption, as they will not have a prior year tax filing to show compliance with the minimum revenue standard.

Reporting Companies will need to report BOI on each of its Beneficial Owners. A "Beneficial Owner" is any individual who, directly or indirectly, either (i) exercises substantial control over a reporting company, or (ii) owns or controls at least 25% of the ownership interests of a reporting company. Minor children, custodians, agents, company officers acting solely as employees, individuals with only a future inheritance right, and creditors of a Reporting Company are not generally considered Beneficial Owners.

"Substantial control" means serving as a senior officer, having authority over the appointment or removal of a senior officer or a majority of the board (or similar body), directing important decisions, or having any other form of substantial influence or control over a Reporting Company.

"Ownership interests" is broadly defined and can include profits interests, convertible notes, and options to acquire equity interests. The Act seeks to look through any holding company owners to identify the individuals who ultimately have substantial interests in a company.

Information to be Provided

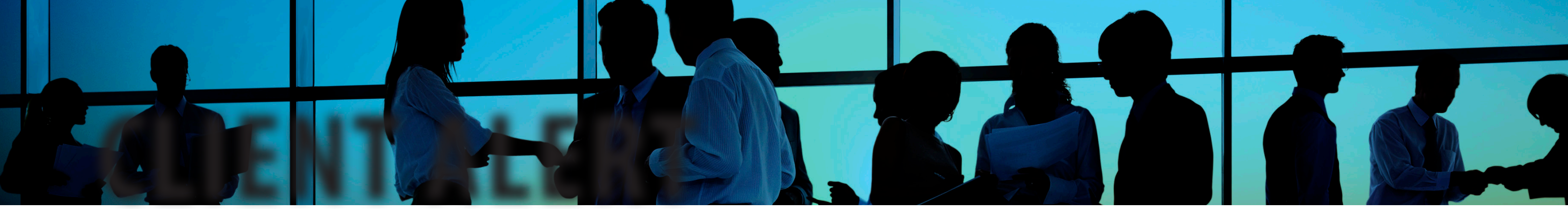
Reporting Companies are to report the following BOI for each Beneficial Owner: (1) full legal name, (2) date of birth, (3) current residence address, and (4) the person's unique identifying number from a passport, driver's license, or other government-issued document, including a copy of the document which includes a picture. Individuals can register with FinCEN and be assigned a special number to be used in these filings. All filings are to be made online through a form that has not been finalized as of this writing.

Reporting Companies formed after January 1, 2024, will also need to report BOI regarding each "Company Applicant". A "Company Applicant" is the individual who directly files the formation documents (or registration documents for a foreign Reporting Company), as well as the individual primarily responsible for directing the filing. Practically speaking, the attorney drafting or directing the drafting of formation documents, as well as the associate or legal assistant who makes the filing, will qualify as Applicants.

Filing Deadlines; Required Updates

Reporting Companies organized after January 1, 2024, are to file within 30 days after receiving notice of their formation. Reporting Companies existing before January 1, 2024, have until the end of 2024 to submit their required BOI. Companies that are exempt do not need to file.

Filings do not need to be renewed, but Reporting Companies will need to update their filings within 30 days after any changes. It will be important to designate someone to monitor a company's filed information for changes that trigger an update (even something as simple as a officer changing her address).



Conclusion

FinCEN estimates that over 33 million companies (about 90% of America's business entities) will be required to file under the Act in 2024. The Act imposes substantial penalties on companies that don't make a required filing and their controlling officers. Existing companies need to evaluate whether they are Reporting Companies and thus will need to file next year, keeping in mind that it may take some time to collect BOI from their Beneficial Owners. Entrepreneurs looking to start a new business in 2024 and beyond need to collect the required information from their investors and management during the formation process, and include these filing requirements in their formation checklists and budgets.

ABOUT THE AUTHORS

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