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The Corporate Transparency Act: Overview & Filing Requirements

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The Corporate Transparency Act: Overview & Filing Requirements

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The Corporate Transparency Act (the “*CTA*”), 31 U.S.C. § 5336, effective January 1, 2024, establishes reporting obligations that require a range of entities to file with the U.S. Treasury’s Financial Crimes Enforcement Network (“*FinCEN*”) identifying information about themselves, their beneficial owners (including senior officers and other decisionmakers), as well as people involved in creating or registering the entities.

There is still a significant amount of uncertainty regarding the CTA. FinCEN continues to publish guidance regarding the CTA’s requirements and the U.S. District Court for the Northern District of Alabama recently held the CTA unconstitutional (but only enjoined FinCEN from enforcing the CTA against the specific plaintiffs in that case). As a result, we expect this to be an evolving area of law. In addition, New York has enacted, and other states like California are considering, similar reporting regimes.

CTA OVERVIEW

Reporting Companies. The CTA’s reporting requirements apply to “*Reporting Companies*” – *i.e.*, corporations, limited liability companies, and other similar entities that are (i) created by the filing of a document with a secretary of state or similar office under the law of a state or Indian tribe or (ii) formed under the law of a foreign country and is registered to do business in the United States by the filing of a document with a secretary of state or similar office under the laws of a state or Indian tribe.¹ Because of the broad scope of this definition, all corporations, limited liability companies, and limited partnerships that are doing business in the United States are subject to the CTA reporting obligations as Reporting Companies, unless one of twenty-three specific exemptions apply. Estate planning and other trusts that are created without any filings will not be Reporting Companies and will not have to submit a report.

Exemptions. A full list of exemptions is set forth on Exhibit A – these exemptions have very detailed requirements and typically apply to already regulated companies.²

BOI Reports and Deadlines. The report filed with FinCEN (also referred to as a “*BOI Report*”) is filed electronically through FinCEN’s website (<https://boiefiling.fincen.gov/>). The deadline for a Reporting Company to file its BOI Report depends on its date of formation as set forth below.³

¹ 31 U.S.C. 5336(a)(11).

² See 31 U.S.C. § 5336(a)(11)(B).

³ 31 C.F.R. § 1010.380(a)(1).

| Date of Formation | Deadline for Filing |
|--------------------------------|----------------------------|
| Formed On or Before 12/31/2023 | January 1, 2025 |
| Formed During 2024 | 90 days post-formation |
| Formed During or After 2025 | 30 days post-formation |

Importantly, these are not annual or recurring filings. After the initial BOI Report is filed, a Reporting Company is only required to file another BOI Report to the extent information previously submitted changes or is found to be incorrect. All Reporting Companies, regardless of when formed, only have 30 days to update their report with any changes to the reported beneficial owner or company information.⁴

Reported Information. Each Reporting Company is required to report basic identifying information about (i) the company itself, (ii) its beneficial owners (*i.e.*, people who meet certain ownership and control standards), and (iii) if formed after December 31, 2023, its company applicants (*i.e.*, certain people informed in forming or registering the company).⁵

The information required to be submitted is straightforward and should be readily available in most cases. Each Reporting Company will need to report the following information about itself:⁶

- full legal name;
- any alternate names through which it engages in business (*i.e.*, any assumed name or d/b/a);
- business address;
- its jurisdiction of formation; and
- tax identification number.

In addition, the initial report must include the following identifying information for each beneficial owner and company applicant:⁷

- full legal name;
- date of birth;
- current residential street address (or business address in the case of company applicants); and
- a unique identifying number from an acceptable identification document (*e.g.*, an unexpired passport, driver’s license, or other permitted government issued identification card) as well as a copy of such identification document.

FinCEN IDs. To help streamline the reporting process, beneficial owners (and company applicants) can obtain a FinCEN identifier number (a “**FinCEN ID**”) directly from FinCEN, which a Reporting Company can then include on its BOI Report in lieu of the personal identifying

⁴ 31 C.F.R. § 1010.380(a)(2).

⁵ 31 U.S.C. § 5336(b).

⁶ 31 C.F.R. § 1010.380(b)(1)(i).

⁷ 31 C.F.R. § 1010.380(b)(1)(ii).

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