

Beneficial Ownership Reporting Requirements under the Corporate Transparency Act

Increased reporting obligations are approaching quickly in an effort to crack down on money laundering and other illicit activity. These requirements, which are part of the Corporate Transparency Act (CTA), will impact many entities, including those formed for investment purposes or to hold rental or vacation property. Failure to comply with the new reporting obligations will result in hefty penalties — specifically, a civil fine of \$500 per day while the violation continues and possible criminal punishment of a \$10,000 fine and up to two years in prison.

When do the reporting obligations begin?

Reporting companies in existence before January 1, 2024, must file an initial report by January 1, 2025. Reporting companies created on or after January 1, 2024, and before January 1, 2025, must file an initial report within 90 calendar days of the earlier of the date on (i) which it receives actual notice that its creation has become effective or (ii) which a secretary of state provides public notice that the company has been created. Reporting companies created on or after January 1, 2025, will only have 30 calendar days to file.

Who is subject to the beneficial ownership information (BOI) reporting requirements?

There are two broad classifications of reporting companies — domestic and foreign. A domestic reporting company is any entity that is a corporation, a limited liability company, or created by the filing of a document with a secretary of state or any similar office under the law of a state or Indian tribe. A foreign reporting company is any entity formed under the law of a foreign country registered to do business in any state or tribal jurisdiction by filing a document with a secretary of state or any similar office under the law of a state or Indian tribe. Although the CTA will subject many entities to the BOI reporting requirements, there are 23 exemptions, most of which exempt reporting for highly regulated industries (e.g., financial services). A few other notable exemptions are tax-exempt entities and entities assisting tax-exempt entities, large operating companies, publicly traded companies, and inactive entities.

Tax-exempt (and assisting) entities: Tax-exempt entities are exempt from the BOI reporting requirements under the CTA. To qualify for such exemption, the tax-exempt entity must:

- Be an organization described in Section 501(c) of the Internal Revenue Code (the Code) and exempt from tax under Section 501(a) of the Code;
- Be a political organization described in Section 527(e)(1) of the Code and exempt from tax under Section 527(a) of the Code; or
- Be a charitable or split-interest trust.

If an entity ceases to be described in 501(c) or exempt from tax under 501(a) of the Code, then such entity is subject to the BOI reporting requirements 180 days after the entity becomes disqualified.

In addition, an entity assisting a tax-exempt entity may be exempt from the reporting requirements. Any entity that operates exclusively to (i) provide financial assistance to or (ii) hold governance rights over any one of the tax-exempt

entities described above is also exempt from the reporting requirements under the CTA, provided that the entity is organized and owned (or controlled) exclusively by one or more U.S. persons that are U.S. citizens. The entity must also derive a majority of its funding or revenue from one or more U.S. persons who are U.S. citizens.

Large operating companies: Large operating companies are exempt from BOI reporting requirements. An entity that employs more than 20 full-time employees, has an operating presence at a physical office within the U.S., and filed a federal income tax or information return in the U.S. for the previous year demonstrating more than \$5 million in gross receipts or sales sourced to the U.S., meets the large operating company exemption.

Inactive entities: Inactive entities are not subject to BOI reporting requirements. An inactive entity is defined as any entity that:

- Was in existence on or before January 1, 2020;
- Is not engaged in active business;
- Is not owned by a foreign person, whether directly or indirectly; wholly or partially;
- Has not experienced any change in ownership in the preceding 12-month period;
- Has not sent or received any funds in excess of \$1,000, either directly or through any financial account in which the entity (or any affiliate of the entity) had an interest, in the preceding 12-month period; and
- Does not otherwise hold any kind or type of assets, whether in the U.S. or abroad, including any ownership interest in any other entity.

What is required for each reporting company?

For the reporting company:

- The full legal name;
- Trade name or “doing business as” name, if any;
- The address of the entity’s principal place of business;
- The jurisdiction of formation; and
- The entity’s taxpayer identification number (TIN) or employer identification number (EIN).

For every beneficial owner and company applicant:

- The full legal name of the individual;
- The individual’s date of birth;
- A complete address consisting of:
 - In the case of a company applicant, such applicant’s business address
 - In all other cases, the individual’s residential address
- A unique identifying number for the individual, which could be the individual’s driver’s license number or passport number; and
- An image of the document from which the unique identifying number was obtained.

If there is any change to the required information about the reporting company or any beneficial owner, the reporting company must file an updated report no later than 30 days after the date of the change.

Companies formed on or after January 1, 2024, will also have to report company applicant information.

Who is a beneficial owner?

A beneficial owner is any individual who, directly or indirectly, exercises substantial control over such reporting company or owns or controls at least 25% of the ownership interests of such reporting company. An individual is deemed to have substantial control over a reporting company if he or she (i) serves as a senior officer of the reporting company; (ii) has authority over the appointment or removal of any senior officer or a majority of the board of directors; (iii) directs, determines, or has substantial influence over important decisions made by the reporting company; or (iv) has any other form of substantial control over the reporting company. Individuals with “any other form of substantial control” include, but are not limited to, board members and those with rights associated with financing arrangements.

Who is a company applicant?

A company applicant is an individual who directly files the document that creates the company (or registers the entity) with a secretary of state or any similar office under the law of a state or Indian tribe. The term company applicant also includes an individual who is “primarily responsible for directing or controlling such filing if more than one individual is involved in the filing of the document.”

What should you do to prepare?

- Identify all business entities in which you have ownership. Do not forget the LLC holding your beach house or the Family Limited Partnership established years ago.
- Consider whether the entity is subject to the BOI reporting obligations. If the entity is subject to the reporting, does it still serve a practical purpose? If not, should you terminate the entity? Generally, these reporting obligations should not cause one to make irrational business or other planning decisions, but rather should serve as a prompt to vet entities and put proper planning in place to ensure that efficiencies are met and goals attained.
- Be ready to discuss and provide your advisors with the necessary information to comply with these new rules.

If you have any questions or concerns surrounding BOI reporting and how it relates to you, please contact [Laura McKinney](#), [Nick Nester](#), or your relationship attorney.