

## **FINANCIAL CRIMES ENFORCEMENT NETWORK OF THE U.S. DEPARTMENT OF TREASURY NOW REQUIRES ADDITIONAL REPORTING AS PART OF THE CORPORATE TRANSPARENCY ACT**

*February 1, 2024*

As of January 1, 2024, “reporting companies” are required to file reports containing personal information about the companies’ beneficial owners to the Financial Crimes Enforcement Network of the U.S. Department of Treasury (“FinCEN”). This change was instituted as a part of the U.S. Corporate Transparency Act (“CTA”) which was instituted to prevent bad actors from benefiting from their illegally obtained gains.

Only “reporting companies” are required to report to FinCEN under the rules. To ensure compliance with FinCEN’s reporting requirement, companies should first determine whether they are a “reporting company.” A company may be a “reporting company” if the company is:

1. “A corporation, a limited liability company (“LLC”), or was otherwise created in the United States by filing a document with a secretary of state or any similar office under the law of a state or Indian tribe or;
2. A foreign company and was registered to do business in any U.S. state or Indian tribe by such a filing.”

Certain entities are exempt reporting companies, meaning they are not required to report beneficial ownership information to FinCEN. There are 23 exemptions to the reporting requirements, including: publicly traded companies, nonprofits, large operating companies, and subsidiaries of certain exempt entities.

If a company does not meet an exemption, it will have to file the beneficial ownership information (“BOI”) Report with FinCEN. The BOI Report includes information about the company, including: the company’s legal name, trade name, or business name, current address, jurisdiction of formation, and EIN. The reporting company will also need to submit information regarding its “beneficial owners.” A beneficial owner is any individual who directly or indirectly controls the company. Beneficial ownership can be established through ownership of the entity or substantial control. Ownership information is reported if the individual, either directly or indirectly, owns or controls at least 25% of the ownership interest in a reporting company. FinCEN defines “ownership interest” as any of the following interests: “equity, stock, or voting rights; a capital or profit interest; convertible instruments.” FinCEN has stated that “substantial control” can be met through any one of four 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.

The information reported about the beneficial owners include legal name, date of birth, current residential address, and a unique identifying number (i.e., from either a U.S. passport or driver's license).

There are five exceptions to the beneficial owner framework. If the individual is 1) a minor child 2) an intermediary, custodian, or nominee, merely acting on behalf of an actual beneficial owner 3) an employee (meeting certain requirements) 4) a creditor or 5) an inheritor of the company they are not reportable as beneficial owners.

If a reporting company is formed on or after January 1, 2024, the company will also have to identify and report to FinCEN at least one—and at most two—company applicants. The company applicants include both direct filers and individuals who direct or control the filing process. Reporting companies are required to report the same essential, personal information about company applicants as beneficial owners.

Reporting companies may also use a “FinCEN identifier” for simplified reporting, rather than including the individual details of each beneficial owner and company applicant in each report. The FinCEN identifier is specific to the reporting individuals and is available upon request.

To successfully comply with the Rule, reporting should be done electronically through FinCEN's website: [www.fincen.gov/boi](http://www.fincen.gov/boi). When a company has completed the reporting requirements, a confirmation receipt will be sent to the filer.

Companies created or registered before January 1, 2024, will have until January 1, 2025, to submit BOI. Companies created or registered on or after January 1, 2024, and before January 1, 2025, must submit BOI by the earlier of (i) ninety calendar days after receiving actual or (ii) public notice that the company's creation or registration is effective. Companies created or registered on or after January 1, 2025, must submit BOI by the earlier of thirty calendar days after receiving actual or public notice that its creation or registration is effective. Updates and/or corrections to the information provided in the BOI to FinCEN are required to be submitted within thirty calendar days of the update occurring (i.e., a change in beneficial owners, or a minor reaching the age of majority) or the company becoming aware of the need to make a correction to the BOI.

Information a company provides to FinCEN will not be accessible to the public and will not be subject to any Freedom of Information Act requests. FinCEN may however report the information to certain state and federal agencies.

If a company does not comply with the CTA, or willingly provides false or misleading information in its report, the company will be at risk of civil penalties of up to \$591 a day (maxed out at \$10,000) and/or criminal penalties of up to two

years in federal prison. Moreover, individuals can be held personally liable for preparing and submitting false information in reports.

For more information on the Corporate Transparency Act and compliance with reporting, visit [https://www.fincen.gov/sites/default/files/shared/BOI\\_Small\\_Compliance\\_Guide.v1.1-FINAL.pdf](https://www.fincen.gov/sites/default/files/shared/BOI_Small_Compliance_Guide.v1.1-FINAL.pdf).

For questions and assistance on complying with the Corporate Transparency Act, please contact a member of Hancock Daniel's [Compliance](#) team.

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