



# Corporate Transparency Act – Notice

Clients and Friends,

The Corporate Transparency Act (the “Act”), which became effective January 1, 2024, requires that certain entities provide information to the Financial Crimes Enforcement Network (“FinCEN”) with respect to such entity’s beneficial owners (“BOI Report”). The law requires such entities to submit their BOI Reports electronically to the online database on the FinCen website at [www.fincen.gov/boi](http://www.fincen.gov/boi).

Following is a general overview of the requirements of the Act. A full recitation of the requirements of the Act can be found on the FinCEN website.

“**Reporting Companies**” are domestic entities formed by the filing of a document with its state of organization (including corporations, limited liability companies, limited partnerships and, in some states, general partnerships) and foreign entities formed under the laws of a foreign country that have registered to do business in the United States (the “U.S.”) by filing a document with a secretary of state or any similar office.

There are 23 types of entities that are exempt from the reporting requirements of the Act, including charitable organizations, publicly traded companies, investment advisors, banks, certain other businesses that are already subject to federal regulation, large operating companies, and inactive companies. A full list of exempt entities is attached to this letter.

“**Large Operating Companies**” are those that (i) employ more than 20 U.S. full-time employees, (ii) filed federal income tax returns for the previous year showing more than \$5 Million in gross receipts from U.S. sources, and (iii) have a physical office located in the U.S. **Large Operating Companies are exempt from the reporting requirements of the Act.**

**“Inactive Companies”** are those which (i) have been in existence prior to January 1, 2020, (ii) are not currently engaged in an active business, (iii) are not owned, in whole or in part, directly or indirectly, by a foreign person, (iv) have not undergone a change in ownership in the prior 12 months, (v) have not sent or received funds greater than \$1,000 in the prior 12 months, and (vi) hold no assets. **Inactive Companies are exempt from the reporting requirements of the Act.**

**“Beneficial Owners”** are individuals who, directly or indirectly, either own 25% or more of the ownership interests in the entity, or exercise “substantial control” over the entity. A person is considered to exercise substantial control if the person (i) is a senior officer, (ii) has the authority over the appointment or removal of a senior officer, (iii) has substantial influence over important decisions, or (iv) has any other form of substantial control. Essentially, the term Beneficial Owner includes any senior officer, any voting shareholder, partner, or LLC member with more than a 25% ownership interest or anyone else who, by virtue of some agreement or practice, exercises substantial control over the entity or has authority over the hiring or firing of senior officers. For equity owners that are trusts, the information must be provided for the trustees (and, in some cases, the ultimate owners/ beneficiaries). Similar information also must be provided for other entities that are equity owners.

#### **Initial BOI Report Filing Information:**

Reporting Companies must file an initial BOI Report and updated or corrected BOI reports as needed. **There is no annual reporting requirement.**

Reporting Companies created or registered to do business in the U.S. before January 1, 2024 must submit their BOI Report to FinCEN by December 31, 2024.

Reporting Companies created or registered to do business in the U.S. in 2024 must submit their BOI Report to FinCEN within 90 days of their creation or registration.

Reporting Companies created or registered to do business in the U.S. after December 31, 2024 must submit their BOI Report to FinCEN within 30 days of their creation or registration.

For Reporting Companies created or registered to do business in the U.S. in 2024 and thereafter, such entities must include information with respect to Company Applicants. A **“Company Applicant”** is the individual who directly filed the document that created the Reporting Company or the document registering the Reporting Company to do business in the U.S. and/or the individual who was primarily responsible for directing or controlling the filing of or the creation of the documents (meaning, the attorney or paralegal who prepared the document and filed it with the state or sent it to the filing service for filing with the state).

Beneficial Owners and Company Applicants must provide the following: (i) name, (ii) date of birth, (iii) residential street address (office address for beneficial owners that are entities), (iv) the person’s identification number from a driver’s license or passport, and (v) a copy of the driver’s license or passport.

Reporting Companies must provide the following information: (i) its legal name; (ii) any trade names, “doing business as” (d/b/a), or “trading as” (t/a) names; (iii) the current street address of its principal place of business if that address is in the U.S., or, for reporting companies whose principal place of business is outside of the U.S., the current address from which the company conducts business in the

U.S. (for example, a foreign reporting company’s U.S. headquarters); (iv) its jurisdiction of formation or registration; and (v) its Taxpayer Identification Number (or, if a foreign reporting company has not been issued a TIN, a tax identification number issued by a foreign jurisdiction and the name of the jurisdiction).

### **Updated/Corrected BOI Reporting:**

If, after the filing of the initial BOI Report any information changes, such changes must be reported to FinCEN no later than 30 days after the date on which the change occurs.

Some examples of the changes that would require an updated BOI Report are (i) any change to the information reported for the Reporting Company, such as registering a new business name, (ii) a change in beneficial owners, such as a new CEO, or a sale that changes who meets the ownership interest threshold of 25% and (iii) any change to a beneficial owner’s name, address, or unique identifying number previously provided to FinCEN. For trusts, this includes change in identity of any trustee. If a beneficial owner obtained a new driver’s license or other identifying document that includes a changed name, address, or identifying number, the Reporting Company also would have to file an updated BOI Report with FinCEN, including an image of the new identifying document.

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According to FinCEN, they will permit Federal, State, local, and Tribal officials, as well as certain foreign officials who submit a request through a U.S. Federal government agency, to obtain beneficial ownership information for authorized activities related to national security, intelligence, and law enforcement. Financial institutions will also have access to beneficial ownership information in certain circumstances, with the consent of the Reporting Company. Those financial institutions’ regulators will also have access to beneficial ownership information when they supervise the financial institutions.

FinCEN is developing the rules that will govern access to and handling of beneficial ownership information.

Information contained in the BOI Reports reported to FinCEN will be stored in a secure, non-public database using security methods and controls typically used by the Federal government to protect nonclassified yet sensitive information.

**There are criminal and civil penalties for noncompliance: a civil penalty of up to \$500 per day for each day that the violation continues, up to \$10,000, and a fine of not more than \$10,000 plus imprisonment for not more than two years.**

Various states may also impose separate filing requirements. For example, New York specifies that failure to file as required with the NY DoS will be noted on the records of NY DoS until disclosure is filed (with a potential \$250 civil penalty).

FinCEN expects that many, if not most, Reporting Companies will be able to submit their BOI Report to FinCEN on their own, using the guidance FinCEN has issued.

Please note that there are many legal actions and legislative initiatives pending that may result in changes to the above information prior to December 31, 2024.

If you would like our assistance in complying with the requirements of the Act or have any questions, please contact us.

## Practice Areas

- Corporate Law