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Corporate Transparency Act: beneficial ownership information reporting begins

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Introduction

Enacted on 1 January 2021, the Corporate Transparency Act (CTA) establishes a beneficial ownership reporting regime for US entities, pursuant to which reporting companies must submit a report containing "beneficial owner" and "company applicant" information (together, "beneficial ownership information" (BOI)). On 29 September 2022, the US Department of the Treasury's Financial Crimes Enforcement Network (FinCEN) released final regulations and set a 1 January 2024 start date. On 1 January 2024, FinCEN opened its BOI E-Filing System and a link to request an optional FinCEN ID. This article discusses some practical considerations for preparing a reporting company's initial BOI report and reminds readers of the penalties for failure to file.

BOI E-Filing System

BOI reports are submitted electronically through a secure filing system available via FinCEN's BOI E-Filing website. The platform includes the option of inputting required data using the web-based application directly or completing a fillable PDF version that is then uploaded.

FinCEN expects that many, if not most, reporting companies will be able to submit their BOI report on their own using the [guidance](#) FinCEN has issued. There is no fee for submitting a BOI report to FinCEN. Reporting companies that need help meeting their reporting obligations can consult with professional service providers such as lawyers or accountants.

Registered agents and commercial enterprises are offering to prepare and submit BOI reports for a fee. However, a reporting company should ensure that their legal adviser has identified the individuals to be reported, as most non-law firm third party service providers are not advising on the legal requirements of who must be reported. Instead, they are collecting the data submitted to them by the reporting company, uploading to FinCEN, and providing a platform for organizing and maintaining the data.

The BOI report may be filed on the reporting company's behalf by anyone whom the reporting company authorizes to do so, such as an employee, owner or third-party service provider. When submitting the BOI report, individual filers should be prepared to provide basic contact information about themselves, including their name and email address or phone number.

US territory entities are subject to CTA

An entity established or registered in one of the 50 states or the District of Columbia will be required to submit a BOI report, unless one of the 23 exemptions applies. Similarly, a company that is created or registered to do business by the filing of a document with a US territory's secretary of state or similar office, and that does not qualify for an exemption, must file a BOI report with FinCEN. US territories are the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, American Samoa, Guam, and the US Virgin Islands.

Reporting Entity Tax Identification Number

The final regulations specify that a BOI report must include the IRS taxpayer identification number (TIN) of the reporting company or where a foreign reporting company has not been issued a TIN, a tax identification number issued by a foreign jurisdiction and the name of such jurisdiction. FinCEN's Small Business BOI Reporting Guide and FAQs both explain the process for a reporting company to apply for an employer identification number (EIN).

US tax rules allow a single member LLC that is disregarded for tax purposes to use the tax identification number (ID) of its single member, since that member is the owner of and reports any income earned by the LLC for US income tax purposes. In the case of a US individual member, that tax ID is the social security number of the individual. So, it was thought that such a reporting company would have to apply for its own EIN in order to submit its initial BOI report.

However, the data fields of the E-Filing System include in the "tax identification type" dropdown box the option of "social security number" in addition to EIN and ITIN. The explanatory text says:

Instructions for Item 7 – Tax identification type:

Select "EIN" if the reporting company has a U.S. Employer Identification Number (EIN). Select "SSN-ITIN" if the reporting company utilizes a U.S. Social Security Number (SSN) or Individual Taxpayer Identification Number (ITIN) as a tax identification number. Select "Foreign" if the reporting company has a tax identification number issued by a foreign jurisdiction and does not have a U.S. tax identification number.

Thus, a reporting company LLC will not need to apply for an EIN prior to filing a BOI report if it properly uses its single member's tax ID.

Applying for FinCEN ID

A reporting company must report any individual who, directly or indirectly, either:

- exercises substantial control over such reporting company (the "control prong"); or
- owns or controls at least 25% of the ownership interest of such reporting company (the "ownership prong").

A reporting company established on or after 1 January 2024 must also report up to two individuals who meet the definition of "company applicant". Prior to filing an initial BOI report, consideration should be given to applying for a FinCEN ID for reportable individuals and parent companies (for details on what constitutes a "reporting company" please see "[Corporate Transparency Act: identifying individuals who own or control ownership interests of reporting companies](#)").

Individuals

For each reportable individual, the reporting company must include the following data in its BOI report:

- full legal name;
- date of birth;
- residential address (or business street address if acting in scope of employment); and
- photo ID number and upload image of a non-expired US passport, a state, local or Indian tribe identification document, a state-issued driver's license, or a foreign passport if the individual has no US identification document.

FinCEN expects that reporting companies will take care to verify the information they receive from their beneficial owners and company applicants before reporting it to FinCEN. In a situation where a reportable individual claims to not have a permanent residential address, the company should report the individual's residential address that is current at the time of filing, then submit an updated report when the address changes.

If any BOI reported to FinCEN changes, the reporting company is required to submit an updated BOI report within 30 days of such change. Where an individual was reported by more than one reporting company, this means each company must file an updated BOI report. For example, a family member may serve as a senior officer for several companies within the family's succession planning structure.

To minimise the number of BOI updates required, prior to the reporting company filing its initial BOI report, the reportable individual can apply for a FinCEN ID. First, the individual creates an account at login.gov. Then, the individual applies for a FinCEN ID by submitting the data listed above. The ID is issued immediately.

When the reporting company prepares its initial BOI report, it inputs just the individual's FinCEN ID in the appropriate data field. If the reported individual moves to a new residential address, that individual updates their personal FinCEN ID account and the reporting company does nothing.

Advisers to families with succession planning structures that include US entities may wish to encourage reportable individuals to obtain a FinCEN ID. This will provide some data privacy in addition to minimising the number of updates required by the reporting company.

Entities

When preparing its initial BOI report, there is an option for the reporting company to request a FinCEN ID. The separate "create a FinCEN ID" option on FinCEN's BOI page is only for individuals. If a reporting company wishes to request a FinCEN identifier after submitting its initial BOI report, it submits an updated report and ticks the box to request a FinCEN identifier, even if the company does not otherwise need to update its information. Although not required, advisers may want to recommend that all reporting companies request a FinCEN ID when filing its initial report, especially where a reporting company is owned by or may itself own another reporting company.

Reporting FinCEN ID of another entity

BOI reports for companies in a chain of ownership may wish to take advantage of the shorthand option of reporting ownership through another entity. In a final rule released in December 2023, FinCEN provides that a reporting company may report another entity's FinCEN ID and full legal name in lieu of the information required with respect to the individual beneficial owners of the reporting company only if:

- the other entity has obtained a FinCEN ID and provided that FinCEN ID to the reporting company;
- an individual is or may be a beneficial owner of the reporting company by virtue of an interest in the reporting company that the individual holds through an ownership interest in the other entity; and
- the beneficial owners of the other entity and of the reporting company are the same individuals.

If at any time the reportable beneficial owners of either the reporting company or the entity whose FinCEN identifier was reported changes such that the two are no longer identical, then the reporting company must file an update with FinCEN and can no longer report the relevant entity's FinCEN identifier.

The definition of "beneficial owner" includes two prongs, an "ownership" prong and a "control" prong. Thus, absent clarification otherwise from FinCEN, in order for the beneficial owners of the two reporting companies to be identical, it appears that the same individuals must exercise substantial control over both companies.

No option to indicate required data as "unknown"

Reporting companies are responsible for ensuring that they submit complete and accurate BOI for its beneficial owners and, if newly established, its company applicants. Starting 1 January 2024, reporting companies have a legal requirement to report required BOI to FinCEN. At the time the filing is made, the reporting company is required to certify that its report is true, correct and complete.

FinCEN expects that reporting companies will take care to verify the information they receive from their beneficial owners and company applicants before reporting it to FinCEN. Advisers to reporting companies should make beneficial owners and company applicants aware that they may face penalties if they willfully cause a reporting company to fail to report complete or updated beneficial ownership information.

The first implementation of the BOI E-Filing System released on 1 January does not include the option of "unknown" answer boxes. FinCEN has said that it may eventually adopt an alternative implementation at a later date following feedback from filers, law enforcement agencies and other key stakeholders. The first implementation requires the reporting company to complete all required data fields, and the BOI report form can only be submitted once each required field has been completed. Any field left blank, whether intentionally or accidentally, will prevent the filer from submitting the report. FinCEN will seek continual feedback from filers and database users.

Penalties

As specified in the Corporate Transparency Act, a person who willfully violates the BOI reporting requirements may be subject to civil penalties of up to \$500 for each day that the violation continues. That person may also be subject to criminal penalties of up to two years imprisonment and a fine of up to \$10,000. Potential violations include willfully failing to file a beneficial ownership information report, willfully filing false beneficial ownership information, or willfully failing to correct or update previously reported beneficial ownership information.

The CTA requires reporting companies to file reports and prohibits failures to report. Senior officers of an entity that fails to file a required BOI report may be held accountable for that failure. In addition, a person may be subject to civil and/or criminal penalties for willfully causing a company not to file a required BOI report or to report incomplete or false beneficial ownership information to FinCEN.

Comment

The CTA is effective as of 1 January 2024. If a US entity is not exempt, it is a reporting company and must file a BOI report. The same is true for a foreign entity registered to do business in a US state. The initial BOI report for a reporting company in existence prior to 1 January is due no later than 1 January 2025. The initial BOI report for a reporting company established or registered in 2024 is due within 90 days of its creation or registration. Given the penalties for failure to file, identifying reportable individuals and filing a reporting company's initial BOI report is now a priority.

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