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Legal Alert: There are new federal reporting and compliance requirements under the Corporate Transparency Act that will impact many U.S. companies.

As of January 1, 2024, a new reporting requirement has gone into effect that will require a broad range of entities to file a Beneficial Ownership Information (“BOI”) report with the United States Department of Treasury’s Financial Crimes Enforcement Network (“FinCEN”). This new reporting requirement is required under the Corporate Transparency Act (“CTA”), which was passed as part of the National Defense Authorization Act, an anti-money laundering law.

This is a major legal development that will be onerous on many companies and owners and imposes severe penalties for noncompliance. Attorneys on our Firm’s CTA Committee have closely followed the CTA since its enactment and are familiar with its requirements and ramifications. Our Firm stands ready to assist you in determining the specific impact of the CTA on your organizations and transactions, as well as advise you on what actions you need to take to comply with the CTA.

While there are still many questions unanswered, here are the basic requirements of the CTA.

1. Who is required to report under the CTA’s reporting requirement?

- a. Corporations, limited liability companies, and other business entities that were created by a filing with a secretary of state or a similar office to create the entity or, for foreign companies, a registration to do business in the United States.
 - i. This will capture more than just operating businesses – many family estate planning entities, joint venture entities and real estate holding limited liability companies will be required to report.
- b. There are 23 exemptions to the reporting requirement listed in the CTA, including public companies, registered broker-dealers, certain investment companies, banks, 501(c) tax-exempt entities, inactive business entities, and insurance companies. Additionally, an entity is exempt if it meets all the following:
 - i. Has more than 20 full-time employees in the United States;
 - ii. Reported more than \$5,000,000 in gross receipts or sales (including the receipts or sales of subsidiaries and other entities through which such entity operates) on its previous year U.S. tax returns; AND
 - iii. Operates from a physical office located within the US.

2. **When must entities file their initial BOI report?**

- a. If the entity was formed **PRIOR to January 1, 2024**, the reporting entity must file its initial report **by January 1, 2025**.
- b. If the entity was formed on or after **January 1, 2024 but before January 1, 2025**, under the current rules, the reporting entity must file its initial report **within 90 days** after formation.
- c. If the entity is formed on **January 1, 2025 or later**, under the current rules, the reporting entity must file its initial report **within 30 days** after formation.
- d. Additionally, once a reporting entity has filed an initial report, if there is any change in the information provided, the reporting entity must file an updated report within **30 days** after the changes. For example, if there is a change in ownership or the primary address for a beneficial owner changes, a new report will need to be filed. Beneficial owners will have an ongoing obligation to let a reporting entity know of such a change.

3. **What information do entities need to report?**

- a. Entity:
 - i. Full legal name of the entity and any trade or DBA names;
 - ii. Business address;
 - iii. State or Tribal jurisdiction of formation or registration; and
 - iv. IRS Taxpayer ID Number (EIN or TIN).
- b. Beneficial Owner:
 - i. Full legal name;
 - ii. Date of birth;
 - iii. Address; and
 - iv. Photo ID and ID number (ex. driver's license or passport).
- c. Company applicants (only applies to reporting companies formed on or after January 1, 2024):
 - i. Full legal name;
 - ii. Date of birth;
 - iii. Address; and
 - iv. Photo ID and ID number (ex. driver's license or passport).
- d. Individuals (beneficial owners and company applicants) may submit the information required above directly to FinCEN and obtain a FinCEN identifier. An individual who has a FinCEN identifier may instead provide their FinCEN identifier to the reporting entity.

4. Who is considered a beneficial owner?

- a. An individual who, directly or indirectly:
 - i. Exercises substantial control over a reporting company; or
 - ii. Owns or controls at least 25% of the ownership interests of a reporting entity.
- b. An individual exercises substantial control if:
 - i. The individual is a senior officer (president, CFO, CEO, COO, GC).
 - ii. The individual has authority to appoint or remove certain officers or a majority of directors (or similar body) of the reporting company.
 - iii. The individual is an important decision-maker for the reporting company.
 - iv. The individual has any other form of substantial control over the reporting company.

5. How will this apply to trusts who own interests in family planning entities?

- a. The following are specifically included in the definition of a beneficial owner:
 - i. A trustee of a trust and those individuals who have the authority to dispose of trust assets;
 - ii. A beneficiary who (A) is the sole permissible beneficiary of trust income and principal or (B) has the right to demand a distribution or withdraw all of the trust assets; or
 - iii. A grantor or settlor who retains the right to revoke a trust or withdraw trust assets.

6. What are the penalties for failing to comply with the CTA reporting requirements?

- a. For willful reporting violations, there are civil or criminal penalties that include a fine of \$500 per day (up to \$10,000) and imprisonment for up to 2 years.
- b. There are also civil and criminal penalties for the unauthorized disclosure and use of BOI.
- c. If you file a report and become aware that you have provided incorrect or incomplete information, you will not be subject to penalties if you correct your filing within ninety (90) days.

7. Who can access beneficial ownership information?

- a. Federal, State, local, and Tribal officials will be able to obtain BOI for authorized activities related to national, security, intelligence, and law enforcement. Certain foreign officials will also be able to access BOI by submitting a request through a U.S. Federal government agency.

- b. Reporting companies can also give consent to financial institutions to access BOI in certain circumstances.

Reporting entities required to file a BOI report may do so by visiting <https://boiefiling.fincen.gov>.

The filing of the BOI report is the entity's responsibility. If you would like our Firm to handle the preparation, tracking, and filing of these reports, please reach out to us via email. Culp Elliott & Carpenter, PLLC will not be responsible to you for the filing of any BOI report unless you request such engagement in writing and the Firm accepts such engagement in writing through the execution of a Beneficial Ownership Information Report Engagement Letter signed by both parties.

We hope this letter has helped provide clarity and guidance regarding the CTA and the new reporting requirements now in effect as of January 1, 2024. Please let us know if you have any questions or concerns about these reporting requirements. More information about the CTA and its requirements can be found at www.fincen.gov/boi.

SUMMARY OF BENEFICIAL OWNER REPORTING REQUIREMENTS

If your company is required to file a BOI Report, you must include information for all individuals who meet **any** of the following criteria and are therefore a “beneficial owner”:

- The person has “substantial control” over the company, i.e., the individual is or has the authority of a senior officer of the company.
- The person owns a twenty-five percent (25%) or more interest in the company through equity interests, profits interests, convertible instruments, warrants, options, puts, calls, and other such company interests.
- The person controls twenty-five percent (25%) or more of the interests in the company through joint ownership, a trust arrangement, or other indirect arrangement.

Individuals who meet one of the above criteria, however, are excluded from the requirement if they meet one of the following criteria:

- The individual is a minor child.
- The individual is an employee who is not an officer of the company, and only derives substantial control or ownership from their status as an employee.
- The individual is a nominee, intermediary, custodian, or agent of an individual who is a beneficial owner.
- The individual’s interest in the company is only through a right of inheritance.
- The individual is a creditor of the company.

Any person who meets one of the three criteria for a “beneficial owner,” and does not qualify for any of the five exclusions, **must be included in your BOI report**. See below for the information requirements.

If a person meets one of the three criteria for a “beneficial owner,” but is a minor child, **their parent or guardian must be included in your BOI report**. See below for the information requirements.

Otherwise, if a person does not meet any of the criteria for a “beneficial owner,” or qualifies for one of the other exclusions, they are not required to be included in your BOI report.

Beneficial Owner Reporting Information

You must provide the following information for each beneficial owner:

- Full legal name
- Date of birth
- Residential address

- An image of, and the unique identifying number shown on, one of the following identification documents:
- Current United States passport
 - Current state-issued driver's license
 - Current state, local, or tribal identification document
 - Current foreign passport (if the individual does not have any of the above forms of identification)

Individuals may also apply to FinCEN to request a "FinCEN Identifier" number; **you may then submit the FinCEN Identifier that identifies that particular beneficial owner in lieu of the above information.**