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What is Beneficial Owner Information Reporting to FinCen under the Corporate Transparency Act, and Why do I Care?

Client Bulletin

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WHAT IS BENEFICIAL OWNER INFORMATION REPORTING TO FINCEN UNDER THE CORPORATE TRANSPARENCY ACT, AND WHY DO I CARE?

Within the U.S. Department of Treasury, there is a Financial Crimes Enforcement Network Center (FinCen) to which for a number of years U.S. financial institutions have had to report information regarding legal entities, and the beneficial owners and responsible persons of those legal entities, that open an account. The Corporate Transparency Act (“CTA”) was enacted by Congress on January 1, 2021 to combat money laundering, terrorist financing, corruption, and tax fraud. The reporting requirements went into effect on January 1, 2024. “Reporting companies” formed prior to January 1, 2024 have to file an initial beneficial owner information (“BOI”) report by January 1, 2025. Reporting companies formed during 2024 have to file their initial BOI report within 90 calendar days of formation or registration in a state. Reporting companies formed on or after January 1, 2025, will have 30 calendar days to do an initial BOI report.

“Reporting Company”

Under the CTA, a reporting company is any entity formed through the Secretary of State or similar office or registered with the Secretary of State or similar office. Thus, in Ohio, corporations and limited liability companies, and certain trusts, are reporting companies, while partnerships and sole proprietorships are not. The CTA lists 23 categories of entities that are exempt from BOI reporting, generally because those exempt entities are already reporting the same or more information to one or more federal agencies. The most prominent of the 23 categories of exemptions are banks, credit unions, federal income tax exempt entities (but not all not-for-profit entities), public utilities, and “large operating companies.” A large operating company is an entity that employs more than 20 full-time employees in the U.S., has an operating presence at a physical address in the U.S., and filed a federal income tax or information return in the U.S. for the prior tax year showing more than \$5 million in gross receipts or sales within the U.S. The BOI reporting is aimed at small entities, including (or maybe especially) those with no employees.

Information Regarding the “Reporting Company”

The BOI report to FinCen must be done online; no paper reports. A reporting company must file regarding itself its legal name, any trade name (d/b/a) used, the current street address of its principal place of business in the U.S., and its federal taxpayer identification number (EIN/SSN/ITIN, as appropriate).

Information Regarding “Beneficial Owners”

The BOI report requires information regarding, and documents of, the “beneficial owners.” A beneficial owner is an individual who directly or indirectly exercises “substantial control” over the reporting company or who owns or controls, directly or indirectly, 25% or more of the ownership interest of the reporting company. Exceptions to qualifying as a beneficial owner are minor children (provided that the minor child’s parent(s) or legal guardian(s) is/are reported as a beneficial owner), employees other than senior officers, future inheritors, and creditors. The

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If you have friends or associates whom you think would enjoy receiving a copy of this Client Bulletin, please feel free to forward it on. Thank you.

BOI that must be reported to FinCen by a “reporting company” that does not fit into one of the 23 exemptions includes the individual’s legal name, date of birth, residential street address, a “unique identifying number” from an acceptable identification document, the name of the state or jurisdiction that issued that acceptable identification document, and an image of that acceptable identification document.

“Acceptable Identification Document”

An “acceptable identification document” is (i) a current driver’s license issued by a U.S. jurisdiction, (ii) a current identification document issued by a U.S. jurisdiction, local government, or Indian tribe used for the purposes of identifying the individual, or (iii) a current U.S. passport. If the beneficial owner does not have any of those three forms of identification, there may be provided the identifying number from a current foreign government passport.

Subsequent Changes to Information or Documents

When any of the information regarding the reporting company or a beneficial owner changes, or any of the information on the beneficial owner’s acceptable identification document changes, there must be updated reporting. Thus, for example, if a beneficial owner moves his or her residence, the reporting company moves its principal office, or a beneficial owners’ acceptable identification document expires or is replaced, the BOI on FinCen must be updated/ revised within 30 days after the change occurs.

Access to FinCen Information

Under the FinCen Access Rule, access to BOI is limited, but is accessible among others, to federal law enforcement, security and intelligence agencies, state and local law enforcement agencies with court authorization, U.S. Department of Treasury officers and employees who require access to perform their job duties (i.e. IRS agents), and financial institutions subject to customer due diligence requirements (i.e., a bank when an entity customer opens an account or when there is “suspicious activity” in that account).

Civil and Criminal Penalties

Why you should care if your entity is a non-exempt reporting company or if you are a beneficial owner of a non-exempt reporting company is because for willful violation of the CTA’s BOI reporting requirements there are civil and criminal penalties, including fines of up to \$10,000 and imprisonment for up to two years.

Options for BOI Reporting

Non-exempt reporting companies can do their own BOI reporting and obtain a FinCen identifier. Manos, Martin & Pergram will be providing initial BOI reporting and update/ maintenance BOI reporting services. In the near future, we will be sending out, to entity clients and individuals believed to be beneficial owners, information regarding the law firm’s BOI reporting services. BOI reporting and updating/maintenance will be incorporated into the law firm’s MinuteMinder® service.

Stephen D. Martin