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Practice Update

Corporate Transparency Act Filing Deadline for Companies Organized Prior to January 1, 2024

October 3, 2024

By Daniel Jacobson

Pursuant to the provisions of the Corporate Transparency Act (CTA),[1] which became effective as of January 1, 2024, all domestic entities organized under the laws of a state prior to January 1, 2024, or foreign entities qualified to do business under the laws of a state prior to January 1, 2024 (a Reporting Company)[2] that are not exempt from the CTA reporting requirements must file a beneficial ownership information report (BOI report)[3] with the United States Treasury's Financial Crimes and Enforcement Network (FinCEN) by December 31, 2024.[4]

The CTA lists 23 specific exemptions to filing BOI reports. Most of the exemptions apply to entities that are already subject to substantial federal reporting or regulatory requirements, such as public companies, banks, registered investment advisors, securities brokers and dealers, insurance companies, public utilities, and registered public accounting firms.[5] If an entity qualifies for an exemption, no BOI report is required to be filed for as long as the exemption applies.

A BOI report contains information about the Reporting Company, those individuals who directly or indirectly own 25 percent or more of the equity or beneficial interests in the Reporting Company, and

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those individuals that exercise substantial control over the Reporting Company.[6]

An individual exercises substantial control over the Reporting Company if the individual satisfies any of the following:

- Is a senior officer (company's president, CFO, general counsel, CEO, COO, or any other person who performs a similar function)
- Has authority to appoint or remove certain officers or a majority of directors (or similar body) of the Reporting Company
- Is an important decision-maker for the Reporting Company, including, for example, decisions about a Reporting Company's business, finances, and structure
- Has any other form of substantial control over the Reporting Company. For example, shareholders agreements, operating agreements, and partnership agreements may create control by minority or other owners or representatives

There are potential civil and criminal penalties for individuals and corporate entities that willfully (1) fail to file a BOI report, (2) file a false BOI report, or (3) fail to correct or update previously reported BOI report. Potential penalties include:

- Civil Penalties: Up to $500 per day for each day the violation continues
- Criminal Penalties: Up to a $10,000 fine, and/or up to two years imprisonment

If you have questions about whether your company is required to comply with the CTA or which beneficial owners or control persons should be reported, please contact your Akerman lawyer so we can assist with the assessment.

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[1] The CTA is found at 31 U.S.C. §5336; and the CTA regulations are found at 31 C.F.R. §1010.380. Also, see, FinCEN, Small Entity Compliance Guide, Beneficial Ownership Information Reporting Requirements, Version 1.1, Section 1.1, December 2023, and FinCEN FAQs.

[2] A Reporting Company includes all domestic and foreign entities formed or registered to do business in the United States through the filing of a document with a secretary of state or similar office. This includes all for-profit and not-for-profit corporations, LLCs, LLPs, LPs, and statutory business trusts.

[3] Domestic entities formed or organized in 2024 and foreign entities qualified to do business in 2024 are required to file their BOI reports within 90 days of the date of formation or foreign qualification. Domestic entities formed after December 31, 2024, and foreign entities qualified to do business in the U.S. after December 31, 2024, are required to submit their BOI reports to FinCEN within 30 days of the date of organization or foreign qualification.

[4] Note that pursuant to the case of *National Small Business United v. Janet Yellen, et.al.* No. 5:22-cv-01448 (N.D. Ala.), the Federal District Court found the CTA to be unconstitutional and not applicable to the plaintiff class, the National Small Business Association, and members of the National Small Business Association. Pending appeal of such decision, FinCEN has agreed to delay enforcement of the CTA against the plaintiff class but has not agreed to suspend enforcement against any other Reporting Companies.

[5] Other than the foregoing, the other common exemptions that may apply are: (A) for “Large Operating Companies”: companies that (i) employ 21 or more full-time employees in the United States (not counting employees of affiliated entities), (ii) have an operating presence in the U.S., and (iii) have filed a federal income tax return in the U.S. for the previous year reporting more than $5 million in gross receipts

or sales from U.S. sources on a consolidated basis; (B) certain tax-exempt entities; and (C) subsidiaries that are wholly owned or controlled by certain exempt Reporting Companies. Note that a newly formed entity will not be able to satisfy the requirements of a "Large Operating Company" in its first year of existence.

[6] All non-exempt Reporting Companies must report: (i) the entity's full legal name; (ii) any trade or d/b/a name; (iii) its principal address; (iv) the jurisdiction of formation or registration; (v) its Tax ID number; and (vi) certain personal information about its owners and controlling persons.
