

## **CLIENT ALERT: CORPORATE TRANSPARENCY ACT**

Congress enacted the Corporate Transparency Act (“CTA”), 31 U.S.C. §5336, on January 1, 2021, set to take effect in the United States on January 1, 2024. The CTA represents a significant reformation of the Federal Bank Secrecy Act, 31 U.S.C. §5311, and related anti-money laundering rules. The purpose of the CTA is to strengthen reporting and transparency of business entity ownership and control in the United States for law enforcement purposes, so as to reduce instances of money laundering, tax fraud and similar crimes, by requiring reporting of certain information to the United States Treasury Department’s Financial Crimes Enforcement Network (“FinCEN”).

All corporations, limited liability companies and similar entities formed or registered to do business in the United States (a “Reporting Company”) will need to either (i) confirm they qualify for an exemption from the CTA’s reporting requirements or (ii) timely submit a beneficial ownership information (“BOI”) report to FinCEN. We emphasize that this applies to ALL corporations, limited liability companies and similar entities created by the filing of a document with a Secretary of State or similar office under the law of a State or Indian Tribe. This would include entities created by filing a document with the Pennsylvania Department of State under the laws of the Commonwealth of Pennsylvania. *See* 31 U.S.C. §5336 (a)(11)(A) (definition of “Reporting Company”).

Entities formed prior to January 1, 2024, must report on or before January 1, 2025. *See* 31 CFR §1010.380(a)(1)(iii).

Entities formed on or after January 1, 2024, and before January 1, 2025, must file the BOI report within 90 calendar days of the entity’s formation. *See* 31 CFR §1010.380(a)(1)(i)(A).

Entities formed on or after January 1, 2025, must file the BOI report within 30 calendar days of the entity’s formation. *See* 31 CFR §1010.380(a)(1)(i)(B).

There are 24 categories of entities exempt from reporting under Section 5336, including, without limitation:

- Large operating companies, defined as entities with more than 20 full-time employees in the United States, more than \$5 million in gross revenue from U.S. sources in the prior year, as evidenced in a Federal Income Tax Return or Information Return, and an operating presence at a physical office within the United States. *See* 31 U.S.C. §5336(a)(11)(B)(xxi) and 31 CFR §1010.380(c)(2)(xxi).
- Publicly traded companies
- Banks
- Insurance companies and other financial institutions
- Nonprofit entities exempt from tax under section 501(a) of the Internal Revenue Code, as described in section 501(c) of the Code. This would include 501(c)(3) entities.
- Certain tax-exempt trusts, i.e., entities already subject to ownership identification reporting requirements.
- Certain inactive entities

*See* 31 CFR §1010.380(c)(2) and 31 U.S.C. §5336(a)(11)(B).

Assuming no exemptions apply, an entity's BOI report should identify itself and any "Beneficial Owner", defined as an individual who, directly or indirectly, either exercises "substantial control" over such Reporting Company or owns or controls at least 25% of the ownership interests of such Reporting Company. *See* 31 U.S.C. §5336(a)(3) (definition of "Beneficial Owner"). The definition of "substantial control" is broad and covers the following activities, including:

- Serving as a senior officer of the Reporting Company.
- Having authority over the appointment or removal of senior officers or a majority of the board of directors.
- Directing, determining or having "substantial influence over important decisions" made by the Reporting Company.
- Having any other form of "substantial control" over a Reporting Company.

*See* 31 CFR §1010.380(d)(1)(i) (definition of "substantial control").

There are limited exceptions as to who qualifies as a Beneficial Owner: minor children (provided a parent or legal guardian is reported as a Beneficial Owner); nominees; employees (excluding senior officers); and creditors (for example, an individual or entity who is owed payment for a debt incurred by the Reporting Company). *See* 31 CFR §1010.380(d)(3).

The BOI report must provide four (4) pieces of information about each Beneficial Owner:

- Full legal name
- Birthdate
- Residential street address
- A unique identifying number and the issuing jurisdiction from an acceptable identification document (and the image of such document) such as a driver's license or passport

*See* 31 CFR §1010.380(b)(1)(ii).

For Reporting Companies created or registered on or after January 1, 2024, the same information for Beneficial Owners must be provided for the entity's *applicants*. An *applicant* is any individual who files the document with the State Secretary of State or other governing body that creates the entity, as well as any individual who is primarily responsible for directing or controlling the filing of the BOI report. *See* 31 CFR §1010.380(e)(1) and (3). The applicant or applicants may be a lawyer or professionals in a law firm, as there is no exemption for lawyers.

Once an entity files its initial report, entities must report changes in beneficial ownership within 30 calendar days of the change. *See* 31 CFR §1010.380(a)(2). Corrections must be made within 30 calendar days after the date on which such Reporting Company becomes aware of or has reason to know of an inaccuracy. *See* 31 CFR §1010.380(a)(3).

BOI reports are filed by accessing and entering data on FinCEN's website. There are penalties for failure to file: civil penalties—\$500.00 for each day that the violation continues or has not

been remedied; and criminal penalties—fines up to \$10,000.00 and prison for up to 2 years. *See* 31 U.S.C. §5336(h)(3).

There are resources on the FinCEN website that provide further information on CTA BOI reporting, including a Small Entity Compliance Guide. *See* [www.fincen.gov](http://www.fincen.gov) for more information.

Benn Law Firm attorneys are available to help with the above. If you have any questions regarding your company's reporting obligations under the CTA, please contact your Benn Law Firm attorney for guidance and support.