

ARTICLES

## Beneficial Ownership Information Reporting: ‘BOI’ Oh ‘BOI,’ Onerous Obligations?

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If you own a business, there is a new federal reporting requirement that might apply to you – the Beneficial Ownership Information (“BOI”) reporting. On January 1, 2024 the reporting obligations under the Corporate Transparency Act (“CTA”) went into effect, which require an unprecedented amount of private information be provided to the U.S. government to combat money-laundering, terrorist financing, corruption, and tax fraud. Pursuant to the CTA’s BOI reporting requirements, certain entities must report their ownership and identifying information to the U.S. government through the U.S. Treasury’s Financial Crimes and Enforcement Network (“FinCEN”).

### **BOI Reporting Requirements:**

All entities that do business in the U.S. (that are not exempt from BOI reporting), must timely submit a BOI report to FinCEN – this includes corporations, limited liability companies, partnerships, etc. There are 23 entity types that are exempt from BOI reporting, including those entities that are generally already subject to reporting requirements that identify actual and beneficial owners (such as the strict SEC reporting requirements). Some other examples of exempt entities are publicly-traded companies, banks, insurance companies, and certain nonprofits.

### *What must be reported?*

Non-exempt entities must identify their “beneficial owners” and, in some cases, the entity’s “company applicants.” Individuals can be a beneficial owner if they: (1) own at least 25% of the entity, or (2) exercise “substantial control” over the entity. The definition of substantial control is broad, and includes senior officers, those with hiring and firing abilities, and those who play an important role in decision-making. A company applicant is any person directly involved in filing the document that

created the entity with the Secretary of State (such as a paralegal or an attorney).

*When are the reports due, and how are they filed?*

Existing entities need to file an initial BOI report no later than December 31, 2024. Newly formed entities must file the initial BOI report within 90 days of being formed (which deadline will be reduced to 30 days in 2025). The initial BOI report requires identifying information about the entity, as well as information on each beneficial owner – their name, birthday, residential address, and an identifying number with an image of the identifying document (this will usually be a driver's license or passport). New entities must report the aforementioned information as well as information regarding their company applicants. All BOI reports are submitted electronically on FinCEN's website.

**Penalties for Non-Compliance:**

There are steep civil and criminal penalties for failure to comply with the BOI reporting obligations. Non-compliant entities (and individuals) can be assessed civil penalties of \$500 per day the violation occurs (up to \$10,000). Additionally, non-compliant individuals can be fined \$500 per day the violation occurs (up to \$10,000), and can also face imprisonment (up to 2 years).

**Be Wary:**

While the initial BOI report is in the forefront on business owners' minds, it is essential that businesses and business owners are aware of the ongoing reporting obligations imposed under BOI. An updated BOI report must be filed if there is a change to any of the following: (1) the reporting company (ex: an Assumed Business Name is registered), (2) a beneficial owner (ex: a beneficial owner is added or removed), or (3) a beneficial owner's information (ex: they move, renew their identification, change their name, etc.). The updated BOI report must be filed within thirty (30) days of the change occurring for an entity to remain in compliance. Additionally, if an entity becomes aware of a mistake or factual error in a BOI report, the entity must submit an updated BOI report within 30 days to remain in compliance.

Unfortunately, it has been brought to FinCEN's attention that there have been numerous fraudulent attempts associated with BOI reporting. Scammers have been soliciting and obtaining individuals' sensitive information under the guise of assisting with BOI reporting. Please be wary when sharing sensitive information, and ensure that you are only providing this information to trusted professionals over secured channels.

**Resources and Assistance with Filing:**

We recognize that the BOI reporting obligations are onerous and have many business owners concerned. However, they do provide an opportunity for business owners to improve their communication skills,



both among themselves and with their attorneys. Our business team can assist with preparing and submitting the BOI report, as well as with analyzing the various issues associated with BOI reporting: whether your entity is exempt, who the beneficial owners are, and whether any of the beneficial owners may be exempt from reporting. Please contact us if you have any questions, or if you would like our assistance in navigating your reporting obligations and in filing the BOI report. An additional resource is the FinCEN's website, which can be located here:

<https://www.fincen.gov/boi>.

#### *About the Authors:*

Natalie E. Smith and Heather A. Kmetz are lawyers in our business department. They advise clients on legal issues and challenges related to business planning, tax, estate planning, and real estate transactions and are spearheading Sussman Shank LLP's BOI compliance reporting on behalf of its clients.

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