

NEW YEAR, NEW REPORTING REQUIREMENTS: WHAT THE CORPORATE TRANSPARENCY ACT MEANS FOR YOUR BUSINESS

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Beginning on January 1, 2024, certain companies (called “reporting companies”) formed or registered to do business in the United States will be required to report their beneficial owners, as well as the identities of the individuals filing documentation to form such companies or register them in the U.S., to the U.S. Department of the Treasury, Financial Crime Enforcement Network (“FinCEN”). Reporting Companies formed before January 1, 2024, will be required to file an initial beneficial ownership information report (“BOI Report”) with FinCEN by January 1, 2025. Reporting companies formed on or after January 1, 2024, will be required to file an initial BOI Report within 90 days of the date the company’s registration becomes effective. Reporting companies formed on or after January 1, 2025, will be required to file an initial BOI Report within 30 days of the date the company’s registration becomes effective. This is the first time the disclosure of such information has been required by federal law, and there are potentially significant penalties for non-compliance.

WHAT IS THE CORPORATE TRANSPARENCY ACT?

Congress passed the Corporate Transparency Act (the “Act”) as part of the 2021 National Defense Authorization Act,¹ with the goal of combatting the use of companies formed or registered to do business in the United States for money laundering and other activities that could harm U.S. national security. The Act directed the Secretary of the U.S. Treasury to create regulations regarding the collection and storage of beneficial ownership information in a non-public database administered by FinCEN.

FinCEN published the final regulations enabling the Act in 2022, which require companies that qualify as “reporting companies” to file information with FinCEN identifying the beneficial owners of the company and the individuals that filed documentation to create the company or register it to do business in the United States.

FinCEN has subsequently issued, and will presumably continue to issue, clarifying interpretive F.A.Q.s and guidance. The information in this notice is a current high level summary, but each situation is different and requires analysis. Please reach out to your RCCB contacts for more information applicable to your situation.

WHAT IS A “REPORTING COMPANY”?

The Act defines a “reporting company” as:

“a corporation, limited liability company, or other similar entity that is (i) created by the filing of a document with a secretary of state or a similar office under the law of a State or Indian Tribe;

or (ii) formed under the law of a foreign country and registered to do business in the United States by the filing of a document with a secretary of state or a similar office under the laws of a State or Indian Tribe.”²

While this definition would seemingly capture all business entities operating in the United States (including foreign companies registered to do business in the United States), the Act exempts 23 types of entities from the definition of reporting company.³ These exemptions include, among others, publicly traded companies,⁴ banks,⁵ credit unions,⁶ brokers or dealers,⁷ investment companies and investment advisors,⁸ certain venture capital fund advisors,⁹ insurance companies,¹⁰ state-licensed insurance producers,¹¹ public accounting firms,¹² certain pooled investment vehicles,¹³ tax exempt entities,¹⁴ large operating companies,¹⁵ and inactive entities.¹⁶ Please note that the exemptions are subject in many cases to more detailed definitions and interpretations that RCCB would be happy to assist you with.

Of particular interest is the exemption for large operating companies, which applies to companies that meet all of the following criteria: (i) employ 20 or more full-time employees in the United States; (ii) in the previous year, filed federal income tax returns in the United States demonstrating more than \$5,000,000 in gross receipts or aggregate sales; and (iii) have an operating presence at a physical office within the United States.

WHICH POOLED INVESTMENT VEHICLES ARE EXEMPT?

Investment companies (as defined in Section 3(a) of the Investment Company Act of 1940 (the “I.C. Act”)) or companies that would otherwise be an investment company under that section but for the exclusions provided from that definition by paragraphs (1) or (7) of Section 3(c) of the I.C. Act, are exempt from the requirements if the entity is operated or advised by: a bank; a credit union; a broker or dealer in securities; an investment company; an investment adviser; or a venture capital fund adviser.¹⁷ This would exclude from compliance with the Act many hedge funds, private equity funds, and venture capital funds but may not exclude from compliance with the Act Section 3(c)(5) real estate funds and Section 3(c)(11) collective investment trusts, unless another exemption is available (such as the subsidiary exemption if the fund or trust’s ownership interests are controlled or wholly owned by certain other exempt entities).¹⁸ More complex fund structures need to be reviewed on an entity-level basis, as the subsidiary exemption does not apply to subsidiaries under the control of an exempt pooled investment vehicle. They may otherwise be eligible for exemption if they are controlled by an investment adviser or venture capital fund adviser. Additionally, if an entity meets the criteria of the pooled investment vehicle exemption but is formed under the laws of a foreign company, such as an offshore feeder fund, the entity would be subject to separate reporting requirements as a “foreign pooled investment vehicle.”¹⁹

WHO IS A BENEFICIAL OWNER?

If a company qualifies as a “reporting company,” it is required to report information regarding its beneficial owners to FinCEN. The Act defines a “beneficial owner” as:

“an individual who, directly or indirectly, through any contract, arrangement, understanding, relationship, or otherwise (i) exercises substantial control over the entity, or (ii) owns or controls not less than 25 percent of the ownership interests of the entity.”²⁰

The definition of “beneficial owner” exempts: (i) minor children (as long as the information of a parent or guardian is reported instead); (ii) individuals acting as nominees, intermediaries, custodians or agents on behalf of another individual; (iii) individuals acting solely as employees (excluding senior officers) of a corporation, limited liability company or other similar entity, and whose control over or economic benefits from such entity are derived solely from the employment status of such individuals; (iv) individuals whose only interest in a corporation, limited liability company or other similar entity is through a right of inheritance; and (v) certain creditors of a corporation, limited liability company or other similar entity.²¹

WHAT INFORMATION IS REQUIRED?

Each BOI report must include information about the reporting company, such as its full legal name, all trade names or d/b/a’s used by the reporting company, the address of the reporting company’s principal place of business in the U.S., the reporting company’s jurisdiction of formation or initial registration in the U.S., and the reporting company’s taxpayer identification number. Further, for each beneficial owner, each BOI Report must include the full legal name of the beneficial owner, the beneficial owner’s date of birth, the beneficial owner’s current residential address, and an image of a current U.S. passport, state driver’s license or other identification document issued by a U.S. jurisdiction, or a foreign passport. Once a reporting company has filed a BOI Report, it is required to report changes to the information contained in the BOI Report to FinCEN within 30 days of the change.

For reporting companies formed or registered to do business in the U.S. on or after January 1, 2024, additional information about a company’s “company applicants” must be included in the initial BOI Report. Companies registered to conduct business in the U.S. before January 1, 2024, are not required to include information about their company applicants in their BOI Reports.

WHAT ARE THE PENALTIES FOR NON-COMPLIANCE?

The senior officers of a reporting company that willfully provides or attempts to provide false or fraudulent information in a BOI Report or willfully fails to provide complete or updated information in a BOI Report may be subject to civil and criminal penalties, including potential imprisonment.²² The Act provides a 90-day safe harbor for correcting inaccurate information inadvertently included in a BOI Report.²³

CONCLUSION

The Corporate Transparency Act is the first federal law requiring that companies formed or registered to do business in the United States provide information about their beneficial owners, and it represents a substantial new compliance requirement. At RCCB, we are

committed to helping our clients understand and satisfy their new obligations under the Act. Our experienced team of professionals can provide you with expert guidance and support throughout the filing process. Please reach out to your RCCB contacts for more information. For the government website, visit <https://www.fincen.gov/boi-faqs>.

¹ The full name of the act is the William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021, [Public Law 116-283](#).

² [31 U.S.C. § 5336\(a\)\(11\)\(A\)](#).

³ The full list of exempt entities is set forth in [31 U.S.C. § 5336\(a\)\(11\)\(B\)](#).

⁴ [31 U.S.C. § 5336\(a\)\(11\)\(B\)\(i\)](#).

⁵ [31 U.S.C. § 5336\(a\)\(11\)\(B\)\(iii\)](#).

⁶ [31 U.S.C. § 5336\(a\)\(11\)\(B\)\(iv\)](#).

⁷ [31 U.S.C. § 5336\(a\)\(11\)\(B\)\(vii\)](#).

⁸ [31 U.S.C. § 5336\(a\)\(11\)\(B\)\(x\)](#).

⁹ [31 U.S.C. § 5336\(a\)\(11\)\(B\)\(xi\)](#).

¹⁰ [31 U.S.C. § 5336\(a\)\(11\)\(B\)\(xii\)](#).

¹¹ [31 U.S.C. § 5336\(a\)\(11\)\(B\)\(xiii\)](#).

¹² [31 U.S.C. § 5336\(a\)\(11\)\(B\)\(xv\)](#).

¹³ [31 U.S.C. § 5336\(a\)\(11\)\(B\)\(xviii\)](#).

¹⁴ [31 U.S.C. § 5336\(a\)\(11\)\(B\)\(xix\)](#).

¹⁵ [31 U.S.C. § 5336\(a\)\(11\)\(B\)\(xxi\)](#).

¹⁶ [31 U.S.C. § 5336\(a\)\(11\)\(B\)\(xxiii\)](#).

¹⁷ [31 U.S.C. § 5336\(a\)\(11\)\(B\)\(xviii\)](#).

¹⁸ [31 U.S.C. § 5336\(a\)\(11\)\(B\)\(xxii\)](#).

¹⁹ [31 U.S.C. § 5336\(b\)\(2\)\(C\)](#).

²⁰ 31 U.S.C. § 5336(a)(3)(A).

²¹ 31 U.S.C. § 5336(a)(3)(B).

²² 31 U.S.C. § 5336(h).

²³ 31 U.S.C. § 5336(h)(3)(C)(i).

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