

NIESAR & VESTAL LLP

Law Alert

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Corporate Transparency Act Filing Obligations and Related Instructions

As we noted in an earlier [Law Alert](#), the federal Corporate Transparency Act (“CTA”) requires most smaller business entities to report their beneficial ownership information (“BOI”) to FinCEN (the “BOI Report”).

We are currently in the process of sending all of our clients a letter and corresponding instructions explaining the CTA and how to file BOI Reports. If you have received our client letter, there is no need for you to keep reading this Law Alert, as that letter contains similar information. However, we also wanted to send out this Law Alert to entities and individuals who are not clients, but who might also benefit from this information.

Businesses subject to the CTA reporting requirements (“**Reporting Companies**”) include those set up as a corporation, limited liability company, limited partnership, certain types of business trusts, and a few unusual other types of entities. General partnerships and proprietorships are not subject to CTA reporting requirements.

Business entities that are either publicly-traded or qualify as a regulated exempt entity, will be exempt from CTA reporting requirements. In addition, other entities will be deemed exempt if they meet **all 3** of the following requirements of the large operating company exemption. To qualify for this exemption, the entity must have:

- (a) more than 20 full-time employees in the United States (“full-time” is at least 30 hours per week or 130 hours per calendar month of services to the entity);
- (b) filed, in the previous year, federal income tax returns in the United States reporting more than \$5 million in gross receipts or sales; and
- (c) an operating physical location in the United States.

If you are required to file a BOI Report, you can do so electronically through a secure filing system. For your convenience, we have included instructions on how to file your company’s BOI Report in [Exhibit A](#) to this Law Alert.

In addition to specified information about the Reporting Company itself, the BOI Report must include specified information regarding its beneficial owners. A beneficial owner is an individual who either directly or indirectly: (1) exercises substantial control over the Reporting Company (even if the person is not an owner of any interest in the Reporting Company), or (2) owns or controls at least 25% of the Reporting Company’s ownership interests. FinCEN’s [Small Entity Compliance Guide](#) provides checklists and examples that may assist you in identifying beneficial owners (*see* Chapter 2.3 “What steps can I take to identify my company’s beneficial

owners?").

For Reporting Companies formed on or after January 1, 2024, such Reporting Companies will be required to report their so-called “company applicants”. “Company applicants” will be those persons (limited to two individuals) who file, or cause the filing of, the documents used to form the Reporting Company entity itself, such as the filing of articles of incorporation or the articles of organization, with the Secretary of State of a particular state.

Please note that the database created by FinCEN from the BOI Reports will not be available to the general public. However, it will be accessible by federal and most states’ criminal and financial law enforcement agencies.

The initial BOI Report for Reporting Companies that were formed on or prior to December 31, 2023, is required to be filed with FinCEN before January 1, 2025. Reporting Companies created or registered to do business in the United States in 2024 have 90 calendar days to file after receiving actual or public notice that their company’s creation or registration is effective. Each Reporting Company will be required to file an amended BOI Report when information in the prior report becomes out of date. Such amended BOI Report must be filed within thirty days of the date upon which the prior BOI Report became out of date. There is no charge for filing the initial BOI Report or an amended BOI Report.

Please note that if your company does not meet an exemption as described above, and is therefore required to file a BOI Report, there are potentially severe penalties that may be assessed, including fines, civil penalties and even prison, in case of willful failure to report complete or updated information. Thus, we strongly encourage you to designate someone within your organization, to serve as your company’s CTA reporting officer, and to review this Law Alert and the enclosure, and be prepared to file the BOI Report prior to the filing deadline.

We believe most Reporting Companies will be capable of filing their BOI Reports with little difficulty. However, if you have questions or need assistance while filing your BOI Report, please feel free to contact Carolina Aricu (caricu@nvlawllp.com), Gerald Niesar (gniesar@nvlawllp.com), or Oscar Escobar (oescobar@nvlawllp.com).

These publications are designed to provide Niesar & Vestal clients and contacts with information they can use to more effectively manage their businesses and access Niesar & Vestal's resources. The contents of these publications are for informational purposes only. Neither these publications nor the lawyers who authored them are rendering legal or other professional advice or opinions on specific facts or matters.

EXHIBIT A

Instructions for filing your company's BOI Report

A. Instructions for filing the BOI Report itself

If you are required to report your company's beneficial ownership information to FinCEN, you can do so electronically through a secure filing system available via FinCEN's BOI E-Filing website (<https://boiefiling.fincen.gov>).

FinCEN permits a Reporting Company to choose one of the three filing methods in order to comply with the BOI reporting requirements:

- Upload finalized PDF version of the BOI Report and submit online.
- Fill out Web-based version of the BOI Report and submit online.
- FinCEN also allows system-to-system BOI Report transmission via secure Application Programming Interface (API) for those, including third-party service providers, who are interested in automating the BOI filing process. The third filing method asks that you contact FinCEN for API Information.

We believe that most of our clients will submit their BOI Reports through either of the first two above-mentioned methods, both of which require the filing to be done online as BOI Reports cannot be mailed or faxed to FinCEN.

Filing is free, and the BOI E-Filing System has a Chat feature which allows you to ask questions on technical filing issues. FinCEN has also prepared useful step-by-step instructions for both the [Online BOI Filing Method](#) and for the [PDF BOI Filing Method](#).

Of course, please contact us if you have any questions regarding the filing process or need further information regarding substantive legal issues in connection with compliance.

B. Requests for FinCEN identifiers

Instead of disclosing personal information to a Reporting Company for inclusion in its BOI Report, a beneficial owner (or company applicant) has the option of obtaining a FinCEN Identifier (“**FinCEN ID**”), which can then be used in future filings. A FinCEN ID can also be issued to the Reporting Company itself. This unique identifier, issued by FinCEN upon request, is obtained by providing the required information directly to FinCEN. While not obligatory, obtaining a FinCEN ID may help streamline the reporting process going forward.

A FinCEN ID can be obtained easily and at no cost. Individuals may request a FinCEN identifier by completing an electronic web form at <https://fincenid.fincen.gov>. FinCEN has also

prepared useful step-by-step instructions for [completing a FinCEN ID Application](#).

Individuals will need to provide their full legal name, date of birth, address, unique identifying number and issuing jurisdiction from an acceptable identification document, and an image of the identification document. After an individual submits this information, they will receive a unique FinCEN identifier.

Reporting Companies may request a FinCEN identifier by checking a box on the beneficial ownership information report upon submission. After the Reporting Company submits the report, the company will receive a unique FinCEN identifier. If a Reporting Company wishes to request a FinCEN identifier after submitting its initial beneficial ownership report, it may submit an updated beneficial ownership information report requesting a FinCEN identifier, even if the company does not otherwise need to update its information.