
The CTA's BOI Updating Requirement and its Impact on State Business Entities

Much attention has been paid, and rightfully so, to the Corporate Transparency Act's (CTA) requirement to file an initial beneficial ownership information (BOI) report with the Financial Crimes Enforcement Network (FinCEN). And states have expressed concern that their business entities are not aware of the CTA and could be subject to significant penalties if they fail to file their initial report.

However, even state business entities that have filed their initial reports need to be aware that this does not end their responsibilities under the CTA. There is more to CTA compliance than filing an initial report. Congress wants the information to be current. Therefore, the CTA also has an updating requirement that a state's domestic and registered foreign (non-United States) corporations, LLCs, and other entities need to comply with in order to avoid those significant penalties.

According to a recent poll of more than 1,400 attendees of a webinar conducted by CT Corporation, nearly 40% percent of respondents found that keeping pace with ongoing reporting obligations was their top concern regarding the CTA. This clearly is a topic of importance for a state's business entities.

What changes trigger the updating requirement?

BOI reporting involves more than just providing personal information that can be used to identify an entity's beneficial owners. The final reporting rule also requires information to be reported about the company. This information includes the reporting company's legal name, all assumed names, the street address of its principal place of business, its jurisdiction of formation, the first state of registration for foreign (non-United States) entities, and its taxpayer identification number.

The reporting rule also requires the filing of an updated BOI report upon a change in the information reported about the company. Many of these changes also trigger a filing with the Secretary of State or equivalent filing office. This would provide the states with an opportunity to remind its entities about the CTA's updating requirement on their website or in their forms or otherwise - should they so desire.

The updating requirement also requires an updated BOI report to be filed upon a change in who the reporting company's beneficial owners are, a change in the personal information the reporting company reported about its beneficial owners, and if the reporting company qualifies for an exemption.

When and where is an updated BOI report filed?

Updated BOI reports must be filed within 30 calendar days of the change that triggered the update. Updated BOI reports are filed with FinCEN. When an updated BOI is filed, all of the required information must be submitted – not just the change. The only exception is if the update is filed to indicate the company is newly exempt. In that case the company checks a box indicating it is filing because it is now exempt and no other information must be reported.

The BOI updating obligation continues as long as the company remains a reporting company. A civil penalty of up to \$591 for each day the violation continues and criminal penalties of up to 2 years in prison and a \$10,000 fine can be imposed for noncompliance with the updating requirement. So it is important that domestic and foreign (non-United States) reporting companies are aware of the updating requirement and file updated BOI reports in a timely manner.

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