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NEW FINCEN REQUIREMENTS CREATE REPORTING OBLIGATIONS FOR MANY AIRCRAFT OWNERSHIP ENTITIES: UNDERSTANDING THE LAW AND ITS REQUIREMENTS

By Suzanne Meiners-Levy and Joshua Blakeney

On January 1, 2024, the Beneficial Ownership Information Reporting (“BOIR”) requirements under the Corporate Transparency Act (“CTA”) went into effect. The BOIR requirements under the CTA are the culmination of an over decade long push by Congress to create a national database of entity beneficial ownership information. The primary goal of creating this database is to give domestic and foreign law enforcement agencies a tool to combat shell companies formed in the United States that are used to launder money for criminal and terrorist organizations.

The task of collecting the BOIR information and managing the database was given to the Financial Crimes Enforcement Network (“FinCEN”) division of the U.S. Department of Treasury. The BOIR information collected by FinCEN, and the database compiled from it, will not be publicly available. FinCen is authorized to share BOIR information with domestic and foreign law enforcement and intelligence agencies as well as financial institutions and the organizations that regulate those institutions.

Under the CTA, all entities that meet the definition of a “reporting company” are required to file a BOIR with FinCEN. A reporting company is defined under the CTA as any domestic entity¹ that is formed under state law by filing a document with a Secretary of State or similar office, unless otherwise exempted under the CTA. In practice, this means that most all Corporations and Limited Liability Companies (“LLC’s”) will need to file a BOIR with FinCEN. The federal tax classification of an entity is not relevant for BOIR requirements. For example, an LLC that has elected to be taxed as a partnership would still be a “reporting company” under the CTA and would need to file a BOIR unless otherwise exempted.

¹ Please note that certain entities formed outside of the U.S. also meet the definition of a “reporting company” under the CTA if they have registered with a secretary of state or similar office to conduct business in that state.



While the list of exemptions under the CTA is expansive, we believe that many aircraft entities will be required to file. One exemption that may apply to common aircraft ownership structures would be the “subsidiary” exemption of a “large operating company” or other exempt entity. This exemption determination should be by the legal or tax professional that advises the parent company.

Unless exempt, each reporting company will need to file a BOIR online with FinCEN. The deadline for when a BOIR is due is dependent on when the reporting company was formed. If the reporting company was formed before January 1, 2024, the deadline to file a BOIR is January 1, 2025. For reporting companies formed on or after January 1, 2024, but before January 1, 2025, the deadline to file a BOIR is 90 calendar days from the date of formation. For reporting companies formed on or after January 1, 2025, the deadline to file a BOIR is 30 calendar days from the date of formation.

The formation date of the reporting company also has an impact on what information is required on the BOIR. For reporting companies formed before January 1, 2024, only each “beneficial owner’s” information is required to be on the BOIR. Reporting companies that are formed on or after January 1, 2024, must include information for the “beneficial owner(s)”, the “company applicant” and the individual who directed the “company applicant” to file the formation documents (if applicable). The information required on the BOIR for each applicable “beneficial owner”, “company applicant” or individual who directed the “company applicant” to file the formation documents is as follows:

1. The individual’s legal name;
2. The individual’s date of birth;
3. The individual’s current residential address; and
4. A copy of either the individual’s:
 - a. State issued Driver’s License or Identity Card; or
 - b. Passport.

As defined under the CTA, a “beneficial owner” is any individual who either 1.) directly or indirectly exercises “substantial control” over the reporting company; or 2.) owns or controls 25% or more of the ownership interest in the reporting company. Please note that a beneficial owner cannot be an entity or trust and that every individual who meets the definition of a beneficial owner must be reported on the BOIR.

An individual is considered to exercise “substantial control” over a reporting company if they meet any one of the four following criteria:

1. The individual is a “senior officer” of the reporting company;
 - a. Senior Officers are the:
 - i. President
 - ii. Chief Financial Officer
 - iii. Chief Executive Officer
 - iv. General Counsel
 - v. Chief Operating Officer

- vi. Any other Officer, regardless of title, who performs a similar function as the officers above.
2. The individual has authority to appoint or remove senior officers or the majority of the board of directors of the reporting company;
3. The individual is an important decision maker for the reporting company; or
 - a. An important decision maker is an individual who makes decisions regarding:
 - i. The nature, scope, location, and attributes of the business
 - ii. The finances of the business
 - iii. The structure of the business
4. The individual has any other form of substantial control over the reporting company.

A “company applicant” is defined under the CTA as the individual who files the formation documents for the reporting company with the secretary of state. The company applicant must be an individual and cannot be a company or other legal entity. If the company applicant is not the individual who directed the company be formed, the individual that directed the reporting company be formed must also be listed. For example, if an employee at Advocate formed the entity, not only would they need to be listed, but the client that directed us to form the entity would also need to be listed.

Each reporting company has a continuing obligation to keep the information in their BOIR up to date. Any change to the information provided on the initial BOIR, such as a change in beneficial ownership or a change in address of one of the beneficial owners, requires an updated BOIR to be filed within 30 calendar days of such change.

While Advocate is happy to assist our clients in meeting their BOIR obligations under the CTA when possible, it is ultimately the entity owner’s responsibility to ensure that BOIR obligations are met. If you have any questions about the BOIR requirements and how they might apply to your structure, please reach out to a member of your Advocate team and they will be happy to assist.

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This article provides an introduction to a complex, and often ambiguous, area of law. Knowledgeable people may disagree as to outcomes in particular cases. Always consult with your advisor.

