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NEW FEDERAL BENEFICIAL OWNERSHIP REGISTRY

Several companies have been sending emails to anyone with an LLC, Corporation or other business entity, warning them of the doom and gloom of the new Financial Crimes Enforcement Networks (FinCEN) Beneficial Owner Registration requirements. While this has been in the works for almost two years now, we did not have any firm guidance until now. If you are not already aware, starting January 1, 2024 almost every company must register with FinCEN.

This new rule requires most all business owners to register their company and provide the personal information of all of its "Beneficial Owners". This can get very complicated, especially with layered LLCs or other business entities as they can create fractional interest when combined together which would make that person a Beneficial Owner.

For any company formed after January 1, 2024, the company must, within 30 days of formation, register the business itself and provide FinCEN with the personal information on every "Beneficial Owner" (to be explained later). For companies formed prior to January 1, 2024, you have until January 1, 2025 to make an initial filing on behalf of each company you may own or have any control in.

In addition to the initial registration, there is an ongoing requirement to update your company's and all of its Beneficial Owner(s) information, within 30 days of any change in your initial filing. This includes any change to the company's or Beneficial Owner's name, address, change in ownership, or any other information required to be reported. What happens if you don't? Well, you are subject to a fine of \$500 per day, per entity as well as an additional fine of \$10,000 each and possibly 2 years in jail if the failure to report is deemed to be willful. Not something you want to mess up. So, what exactly do you have to do?

First who has to register or is considered a "Reporting Company":

- All corporations, limited liability companies, and any other entity that requires the filing of a document with the secretary of State or similar office in the state of formations (Generally all LPs, LLPs, LLLPs)
- There are some exempt companies, however, they are limited. In order for an exemption to apply, your entity would employ over 20 full time employees, is a Tax-Exempt entity, bank, accounting firm, or a few others. The key is that most of the exempt entities are either publicly

traded or have some licensing or governmental regulatory body they answer to. (See attached "Exempt Entities")

Just what must the company report?

1. The Company name and any and all DBAs the company may use.
 2. The physical principal place of business. They do not accept PO boxes as they want to be able to physically locate you.
 3. The company EIN or the tax matters partner for the business (another reason to always get an EIN for all companies)
- After January 1, 2024 they will require whomever filed or caused to be filed the entity to file the initial opening report so the vast majority of time it will be our staff.

Second, after you create the FinCEN filing you must continue to the second step and report all of the "Beneficial Owners" of the company. Who would qualify as the Beneficial Owner?

- A Beneficial Owner is anyone that owns or controls 25% or more of the company's stock, units, membership interest, etc. (See attached Ownership Interest").
- A Beneficial Owner, even if they own less than 25% or no interest at all, is anyone who exercises "substantial control" over the company. You have "substantial control" of the entity if:
 - Senior Officers – President, CEO, CFO, COO, General Counsel, Directors, Chairmen, Managers, General Partners, Members (if the LLC is a Member Managed LLC), Trustees (unless it is a grantor trust where you look directly to the trustor), or any other person, regardless of their title, if they have similar control. Basically, if they can bind the company, disclose. If you have layered LLCs, you have to look through each individual entity until you find an actual person to report so there is no hiding from the government. (See attached "Substantial Control")
 - Actual or people with an ownership interest of 25% or more (think stocks, membership interest, etc.). This actually extends out further to:
 - Any capital or profit interests.
 - Convertible Instruments such as convertible stock, warrants, right to purchase, sell, or contractual profit interest.
 - Options, calls, puts, or even voting trust or assignments.
 - Any document that could be construed as an ownership interest.
 - If you have joint ownership with spouse, treat it as if each of you owned 100% of the interest owned. If it is with other direct family members, I would advise you treat it the same as it is unclear how the government would treat it, and it is not worth the risk.
 - There are five exemptions from the Beneficial Owner definition.
 - The Owner is a minor. – If the owner is a minor, you must report the parent or legal guardian.

- The individual merely acts on behalf of an actual beneficial owner as their nominee, intermediary, custodian or agent.
 - If the individual is 1) an employee of the reporting company, 2) the individual's substantial control is derived solely from their employment status, AND 3) the individual is not a Senior Officer as set forth above.
 - The individual's only interest is a future interest through a right of inheritance.
 - The individual is merely a creditor of the company.
- Once the "Beneficial Owners" (which are the actual owners, officers, managers, etc.) are identified, you are required to report the following information for each owner:
 - Their full Legal Name
 - Date of Birth
 - Complete Current Physical Address
 - Passport, State Driver's License, Government Issued ID number (We must have a copy to upload).

If you think this is a lot to take in, you are right. That being said, it is something that needs to be addressed and once we all establish the formal process needed to comply, we will all be just fine. Now, what do you do? First, for all of your entities you have now, start gathering all of the information that will need to be reported. If you plan on doing it yourself, you will want to go to the FinCEN website and thoroughly review the new requirements. ([Beneficial Ownership Information Reporting | FinCEN.gov](https://www.fincen.gov/beneficial-ownership-information-reporting)) You do have some time to register your current entities, but I would strongly advise you not to wait too long as I fully expect that the system might become overwhelmed at the end of the year.

If you would like us to handle these filings for you, we would be glad to assist. We are rolling out several new services to cover both the initial filing for all entities completed prior to January 1, 2024 and ongoing compliance to handle all reporting changes for our clients. Please drop us a line and we can discuss.