

Corporate Transparency Act: complying with beneficial ownership rules

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On January 1, 2024, the Corporate Transparency Act (CTA) will go into effect, imposing new reporting obligations that will require entities (LLCs, corporations, partnerships, etc.) formed in or doing business in the United States to report their beneficial ownership information (BOI) to the U.S. Department of the Treasury's Financial Crimes Enforcement Network (FinCEN).

The principal purpose of the CTA is to facilitate enforcement of laws intended, if possible, to prevent money laundering, and otherwise to identify and sanction those engaged in money laundering either as an objective or a tool to facilitate other unlawful activity.

Who has to file the BOI report?

Reporting obligations apply to all U.S. and Non-U.S. entities that are "Reporting Companies," unless an exemption applies. "Reporting Company" means any entity (whether a corporation, limited liability company or other entity) that is (a) formed by the filing of a document with a secretary of state or similar office under the laws of any U.S. state, commonwealth, territory, or tribal jurisdiction or (b) formed under the laws of a foreign country and registered to do business in the U.S. by the filing of a document with a secretary of state or any similar office.

Sole proprietorships that don't use a single-member LLC are not considered a Reporting Company.

There are twenty-three types of entities that are exempt from the reporting requirements, many of which are already subject to substantial federal reporting requirements.

Exempt entities include, for example, publicly traded companies and other entities that file reports with the SEC, banks, credit unions, money services businesses, securities brokers and dealers, tax-exempt entities, political organizations, charitable trusts, insurance companies, state-licensed insurance companies, pooled investment vehicles, registered investment advisers, public utilities, accounting firms, inactive entities, and any entity whose ownership interests are controlled by or wholly owned, directly or indirectly, by certain other exempt entities.

"Large operating companies" are also exempt, provided that they (1) employ more than 20 full time employees, (2) have an operating presence in a physical office within the United States, and (3) filed a Federal income tax or information return in the United States for the

previous year reflecting more than US\$5 million in gross receipts or sales from U.S. sources.

What are the reporting requirements?

Each Reporting Company will be required to submit BOI reports to FinCEN. BOI reports must disclose certain information about the Reporting Company and its *beneficial owners* and *company applicants*.

A *beneficial owner* is an individual who, directly or indirectly, either (i) exercises "substantial control" over a Reporting Company or (ii) owns or controls at least 25% of the ownership interests of a Reporting Company.

An ownership interest for purposes of determining beneficial ownership under the CTA is broadly construed to include any stock or other equity interest (whether such interest confers voting rights or not), any capital or profit interest, any instrument convertible into an ownership interest, any option to purchase or sell ownership interests, or any other instrument, contract, arrangement, understanding, relationship, or mechanism used to establish ownership.

An individual exercises "substantial control" if they satisfy any of the following factors:

- serve as a senior officer of a Reporting Company;
- have authority over the appointment or removal of any senior officer or a majority of the board of directors (or similar body) of a Reporting Company;
- direct, determine, or have substantial influence over important decisions made by a Reporting Company; or
- have any other type of substantial control over a Reporting Company.

The following types of individuals are not considered beneficial owners of a Reporting Company:

- a minor child (however, a Reporting Company must report information regarding a minor child's parent or legal guardian);
- an individual acting as a nominee, intermediary, custodian, or agent on behalf of another individual;
- an employee, acting solely as an employee and who is not a senior officer, whose substantial control over or economic

benefits from such Reporting Company are derived solely from the employment status of the employee;

- an individual whose only interest in a Reporting Company is a future interest through a right of inheritance; and
- a creditor of the Reporting Company, unless they exercise substantial control over, or have at least a 25% ownership interest in, the Reporting Company.

A *company applicant* is the individual who, on or after January 1, 2024, directly files the document that creates the domestic Reporting Company or in the case of a foreign Reporting Company, the document that first registers the entity to do business in the U.S., as well as the individual who is primarily responsible for directing or controlling the filing of the relevant document by another.

A Reporting Company that exists or is registered to do business in the U.S. before January 1, 2024 does not need to identify and report on its company applicants.

The CTA authorizes both civil and criminal penalties for non-compliance by companies required to file, by beneficial owners and by the company applicant.

When to file?

With respect to Reporting Companies currently in existence, BOI will need to be reported to FinCEN prior to 1 January 2025. For

Reporting Companies formed or registered in 2024, reporting is required within 90 days of the acceptance of the company's formation or registration filing. For Reporting Companies formed or registered on or after 1 January 2025, reporting is required within 30 days of the acceptance of the company's formation or registration filing.

Reporting Companies have 30 days to file an updated report if there is a change in the information in their previously filed reports or if they become aware or have reason to know of an inaccuracy in earlier filed reports.

Where to file?

The initial BOI report and all updates and corrections are to be filed electronically with FinCEN through a system that will be available via FinCEN's website. There is no fee for filing the reports. FinCEN will not accept reports until January 1, 2024.

Penalties for noncompliance

The CTA provides for both civil and criminal penalties (up to \$10,000- and two-years' imprisonment) against a company for willfully providing false information, failing to provide complete information or failing to update information in FinCEN reports. An individual may be held liable under the CTA if such individual's actions caused such failures or if such individual was a senior officer at the time of such failures.

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