

CORPORATE TRANSPARENCY ACT FILING DEADLINE APPROACHING ON JANUARY 1, 2025

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IMPORTANT NOTICE: *As of March 2nd, 2025, the U.S. Treasury Department announced it will not pursue enforcement actions against domestic reporting companies or their beneficial owners for failing to file their Beneficial Ownership Information (BOI) reports by the deadline, and plans to narrow the scope of reporting requirements only to foreign reporting companies. Read the latest update [here](#), and we will keep you updated on the ongoing saga of uncertainty surrounding the status of the Corporate Transparency Act.*

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Filing Deadline Approaching: January 1, 2025 Is the Deadline for Most Companies to File Initial Report Under Corporate Transparency Act

The Corporate Transparency Act (the "Act") has been in the headlines recently as a result of many lawsuits filed to try to stop its implementation. However, to date, these lawsuits have not prevailed. **As such, unless an exemption applies, the Act requires companies to file a report containing information about their Beneficial Owners (defined below).** These reports must be filed with the Financial Crime Enforcement Network of the Department of Treasury ("FinCEN"). Reports may be completed and filed at: <https://boiefiling.fincen.gov/fileboir>. Because large operating companies are exempt from the Act, the Act primarily requires reporting from small businesses. **The Deadline for Reporting Companies (defined below) formed before January 1, 2024, to file an initial Beneficial Owner report with FinCEN is January 1, 2025.**

The following provides a high-level overview of the Act and is provided for informational purposes only. A more comprehensive discussion of the Act may be found at <https://www.cwlaw.com/newsroom-publications-corporate->

Corporate Transparency Act Filing Deadline Approaching on January 1, 2025

transparency-act. Determining whether a company is a Reporting Company, whether an exemption applies, and who a companies' Beneficial Owners are requires a careful analysis of the facts specific to each company. **If you would like further information or would like to request assistance with compliance with the Act, please contact one of the attorneys in Conner & Winters' corporate practice.**

When does my company have to file a report?

Reporting Companies **formed prior to January 1, 2024** must file their initial reports with FinCEN **on or before January 1, 2025**. Those **formed between January 1, 2024 and December 31, 2024** must file their initial reports **within 90 days of the date of formation**, and those **formed on or after January 1, 2025** will have only **30 days from the date of formation** to file.

If any of the previously reported information about the Reporting Company or Beneficial Owners changes, then a Reporting Company must file an **updated report within 30 days of a change**.

Is my company a Reporting Company that must file?

Under the Act, **Reporting Companies** must report Beneficial Ownership information to FinCEN. Any U.S. corporation, limited liability company, or similar company that was formed, and any foreign company that has registered to do business in the U.S., by filing a document with a Secretary of State or similar governmental agency is a **Reporting Company**, unless an exemption applies. If your company meets the definition of a Reporting Company, it must file a Beneficial Owner report with FinCEN unless it meets one of the 23 available exemptions.

Does my company meet an exemption?

Most of the exemptions available are for otherwise heavily regulated companies, such as publicly traded companies, banks, companies with federal tax-exemptions, and state-licensed insurance producers. Additionally, any company that employs more than 20 full-time employees, has an operating presence in the U.S., **and** filed a tax return in the previous year reporting \$5,000,000 or more in gross domestic receipts is exempt from reporting for so long as it meets all of these criteria.

Likewise, certain inactive companies are exempt. In order to meet the inactive entity exemption, the following six criteria must be met: (1) the company was formed on or before January 1, 2020; (2) the company is not engaged in active business; (3) the company is not owned directly or indirectly, in whole or in part, by a foreign individual; (4) the company has not undergone a change of ownership in the last 12 months; (5) the company has not sent or received more than \$1,000 through any account in which it or any of its affiliates have an interest in the last 12 months; and (6) the company otherwise has no assets of any kind.

Corporate Transparency Act Filing Deadline Approaching on January 1, 2025

Significantly, the act of dissolving an entity does not mean it is exempt from reporting. A dissolved company must file an initial report with FinCEN except where (1) the entity was dissolved, fully wound up, and ceased to exist under state law prior to January 1, 2024, or (2) meets all 6 criteria for the inactive entity exemption.

What must my company report to FinCEN?

Each Reporting Company must report the following information **about itself**:

1. Full legal name;
2. All trade names or doing business as names;
3. Address of the company's principal place of business in the U.S.;
4. Jurisdiction of its formation; and
5. EIN issued by the IRS. If the company is wholly-owned and disregarded for tax purposes and does not have its own EIN, this should be the owning individuals SSN, or the owning company's EIN.

Each Reporting Company must also report the following information about **each of its Beneficial Owners**:

1. Full legal name;
2. Date of birth;
3. Current residential address;
4. A unique ID number from a non-expired (i) U.S. Passport, (ii) state, local or tribal ID document issued for identification purposes, (iii) state issued driver's license, or (iv) for a foreign person who does not have one of the foregoing documents, a foreign passport; and
5. An image of the identifying document.

Reporting Companies formed after January 1, 2024, also have to provide the same information required for Beneficial Owners for their Company Applicants (defined below), except that the business, rather than residential, address of the Company Applicant may be used.

Who are Company Applicants?

A Company Applicant is the individual who files the document with the Secretary of State or similar office to form or register the company in the U.S. and the individual who is primarily responsible for directing or controlling such filing, if different than the filer.

Corporate Transparency Act Filing Deadline Approaching on January 1, 2025

Reporting Companies formed before January 1, 2024, do not have to report information about their Company Applicants.

Who are Beneficial Owners?

Beneficial Owners include **any individual** who (1) **owns or controls 25% or more of the ownership interests** of the Reporting Company or (2) **has Substantial Control over important decisions** of the Reporting Company, including, but not limited to, senior officers.

How do I calculate ownership interests?

In calculating who owns or controls 25% or more of the ownership interests in a Reporting Company, the Act requires the inclusion, in addition to pure equity interests like stock or membership units, the following interests, among others, that are not usually considered as equity: profits interest, convertible debt, the right to purchase, sell or subscribe to any such interest, a put, call, straddle, or other option to buy or sell any such interests, and any other arrangement used to establish ownership.

Who should be reported when a trust owns a Reporting Company?

Since the Act requires information be reported about **individuals** who own or control more than 25% or more of the ownership interest of a Reporting Company, revocable trusts are not Beneficial Owners for purposes of the Act. Rather, the Act considers those individuals who control the trust, and therefore, the ownership interests owned by the trust in the Reporting Company, to be Beneficial Owners of the Reporting Company. Depending on how the trust is set up, each of the following individuals would be a Beneficial Owner of the Reporting Company if the trust owns 25% or more of the ownership interests in the Reporting Company: (1) each trustee or other individual who has the authority to dispose of trust assets; (2) any beneficiary who (a) is the sole permissible recipient of income and principal from the trust or (b) has the right to demand distribution of or withdraw substantially all assets of the trust; and (3) the grantor or settlor of the trust that has the right to revoke the trust or withdraw assets from the trust.

Who has Substantial Control over a Reporting Company?

The Act's definition of "Substantial Control" is extremely broad. Four broad categories of individuals are considered to have Substantial Control over a Reporting Company and, thus, must be listed as Beneficial Owners:

1. Senior officers, such as a president, CFO, general counsel, CEO, COO, or any other officer (regardless of title) who performs similar functions.
2. Any individual who has authority to appoint or remove a senior officer or a majority of the Board of Directors (or similar governing body).

Corporate Transparency Act Filing Deadline Approaching on January 1, 2025

3. Any individual who has substantial influence over important decision made by the company, such as major expenditures, incurrence of significant debt, compensation of senior officers, entering into or terminating significant contracts, and amending the Reporting Company's governing documents. All directors on a Board of Directors and members with less than 25% ownership interest in the event of supermajority approval rights likely exercise Substantial Control under this category.
4. Any other individual who exercises any other form of Substantial Control over the Reporting Company.

How will the reported information be used?

Beneficial ownership information will be stored in a secure database by FinCEN and may only be accessed by federal agencies for national security, intelligence and law enforcement purposes, by state or tribal governments for criminal or civil law enforcement (but only after obtaining a court order), banks (and their federal regulating agencies) for the purposes of customer due diligence compliance (but only with the consent of the Reporting Company), and by the Department of Treasury for tax and Act compliance purposes.

What are the penalties for non-compliance?

If a person willfully fails to submit a Reporting Company's beneficial ownership information when required or willfully provides FinCEN with false or fraudulent information, then that person is subject to a civil penalty of \$500 for each day the violation continues and a fine of up to \$10,000 and up to 2 years in prison. If a person knowingly discloses or uses beneficial ownership information that they obtained through a report submitted by FinCEN in a manner not authorized by the Act, then that person is subject to a civil penalty of \$500 for each day the violation continues and a fine of up to \$250,000 and up to 5 years in prison, but if the unauthorized use or disclosure was committed while violating another law or was part of a pattern of illegal activity involving more than \$100,000, then the person is subject, in addition to civil penalties, to a fine of up to \$500,000 and up to 10 years in prison.

How do I report?

FinCEN has provided a convenient simple web-form located at <https://boiefiling.fincen.gov/fileboir> to file initial Beneficial Owner reports. Many Reporting Companies will find this to be the simplest and cheapest manner to file and confirmation of filing is provided immediately upon submission. If you choose to use the web-form to file you should have all of the information required for the Company and Beneficial Owners ready to input and a scan (in .pdf, .jpg, .jpeg, or .png format) of each Beneficial Owners identification document clearly showing such persons photo and the identification number of the document to upload.

Where can I obtain more information about the Act?

FinCEN has published FAQs and a Small Entity Compliance Guide, both of which can be found at: <https://fincen.gov/boi/small-business-resources>. A more detailed discussion of the Act can be found on our website: <https://www.cwlaw.com/newsroom-publications-corporate-transparency-act>. For additional information or to request

Corporate Transparency Act Filing Deadline Approaching on January 1, 2025

assistance with compliance with the Act, please contact an attorney in Conner & Winters's corporate practice.

This summary is provided as an informational tool. It is not intended to be and should not be considered legal advice, and receipt of this information does not establish an attorney-client relationship.