

THE CORPORATE TRANSPARENCY ACT

12.01.2023

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.*

Federal Requirement for Businesses to Report Information About Their Owners Starting in 2024

Beginning January 1, 2024, every existing business entity and each business entity formed on or after January 1, 2024, unless it meets an exemption, **will have to report identifying information about the entity, its beneficial owners, and persons involved with its formation to the Financial Crimes Enforcement Network (“FinCEN”)**, a division of the U.S. Department of Treasury, pursuant to the new beneficial ownership information (“BOI”) reporting rules issued by FinCEN under the Corporate Transparency Act (the “CTA”). Entities that were formed prior to January 1, 2024 will have to file an BOI report with FinCEN no later than January 1, 2025. Under the current rules, entities formed on or after January 1, 2024 will only have 30 days from formation to file an initial BOI report. **Criminal penalties up to 2 years in prison and civil penalties up to \$500 per day may be imposed on companies that willfully fail to comply** with the CTA and FinCEN’s final BOI reporting rule.

Facing pressure from the international law enforcement community, and over the veto of President Trump, the U.S. Congress passed the CTA in 2021 as part of the Anti-Money Laundering Act of 2020, which was part of the National

ATTORNEYS

Russell C. Ramzel

PRACTICES

Business Formation and Organization

Corporate and Securities

Corporate Compliance and Board Governance

Corporate Compliance and Governance

The Corporate Transparency Act

Defense Authorization Act FY 2021. The CTA's purpose is to prevent illicit actors from exploiting U.S. entities for criminal gain, by, for instance, money laundering through shell companies, and to assist law enforcement in detecting, investigating, and preventing such illegal conduct.

This alert provides a broad educational overview of the CTA and the BOI reporting rules and answers some common questions. **The CTA is complex, and whether the CTA or an exemption to the BOI reporting rules applies to your company, and what and when your company must report to FinCEN under the CTA, requires a detailed inquiry into the specific facts of your company, which cannot be done here. We encourage you to contact our corporate attorneys at Conner & Winters to address the CTA in relation to your company.**

Additionally, FinCEN maintains, and is frequently updating, a webpage with additional guidance on the BOI reporting requirements, including a Small Entity Compliance Guide released on September 19, 2023 and FAQs, which it frequently updates.

Q&A: BUSINESSES THAT MUST FILE BOI REPORTS AND EXEMPTIONS

What types of businesses must report BOI under CTA?

Each **Reporting Company** must report BOI to FinCEN. All business entities should determine if they are a Reporting Company. There are two types of Reporting Companies, Domestic and Foreign. A **Domestic Reporting Company** is an entity that was formed through a filing with a Secretary of State or similar office unless the entity meets the criteria for an exemption. In most states, Reporting Companies include, but are not limited to, corporations, limited liability companies, and limited partnerships. **Foreign Reporting Companies** are entities that are formed outside of the U.S. but have registered to do business in the U.S. through a filing with a Secretary of State or similar office unless the entity meets the criteria for an exemption.

Is there any type of business entity that is not a Reporting Company?

Yes. In most states, sole proprietorships, general partnerships and most types of trusts are not Reporting Companies because they are not formed through a filing with the Secretary of State or similar office. These types of businesses will not be required to report BOI.

The Corporate Transparency Act

My company was formed through a filing with the Secretary of State. Is it a Reporting Company?

Maybe. Your company is a Reporting Company unless it meets the criteria for one of the 23 separate exemptions from BOI reporting available under the BOI reporting rule. Twenty of the exemptions are for entities that are otherwise heavily regulated (e.g., publicly-traded companies or companies that are otherwise regulated by the SEC, state-licensed insurance producers, 501(c) tax-exempt entities, banks, governmental entities, and others). The criteria for exemption for these 20 types of entities is not further discussed in this alert but can be found in the Small Entity Compliance Guide. Exemptions also exist for large operating companies, wholly-owned subsidiaries of exempt entities, and certain inactive entities.

Does my company meet the exemption for a large operating company?

To meet this exemption, your company must meet all of the following criteria:

1. Employ more than 20 full-time employees in the U.S. To qualify as a full-time employee, the employee must be employed an average of at least 30 hours per week.
2. Regularly conduct business in a location in the U.S. that it owns or leases and that is physically separate from the place of business of any unaffiliated entity.
3. Filed a federal tax return for the previous year showing \$5,000,000 in gross receipts (net of returns or allowances), excluding receipts or sales from sources outside the U.S. If the company is part of an affiliated group of corporations, the gross receipts are the amount reported on the consolidated return.

For a start-up company, this exemption will never apply initially because the entity will not yet have filed a tax return. Also, if your company initially meets these criteria, it may not always. If, at any time, the number of your full-time employees drop to 19 or fewer, then your company will lose the exemption and become a Reporting Company, thus requiring your company to file an initial BOI report with FinCEN within the mandated timelines. Finally, if your company is a holding company that owns a large operating company, the holding company will not meet this exemption if it does not employ at least 20 full-time employees directly.

Does my company meet the exemption for a subsidiary of exempt entities?

In order for this exemption to apply, the company must be 100% owned by certain exempt entities. If any of the owners of your company is an individual or an entity that is not exempt, this exemption will not apply.

Does my company meet the exemption for an inactive entity?

An inactive company is exempt if the company meets all of the following criteria:

1. In existence prior to January 2, 2020.

The Corporate Transparency Act

2. Not engaged in any active business.
3. Not directly or indirectly owned by a foreign person or entity.
4. Has had no change in equity ownership in the past 12 months.
5. Has not, directly or indirectly, sent or received more than \$1,000 in the past 12 months through an account owned or controlled by the entity or any of its affiliates.
6. Holds no assets, including equity interest in another company.

Importantly, a company likely will not be able to avoid the reporting requirements simply by dissolving through state law procedures.

Q&A: DETERMINATION OF BENEFICIAL OWNERS AND COMPANY APPLICANTS

Who are my company's Beneficial Owners?

A **Beneficial Owner** is any individual who either (1) directly or indirectly owns or controls more than 25% of the equity of a Reporting Company; or (2) exercises substantial control over a Reporting Company.

Generally, the Beneficial Owners of a Reporting Company are natural persons, not entities. If there is intervening ownership by an entity, the Reporting Company must go up the chain of ownership to the individuals that own the intervening entity. For instance, if Company A is owned 50% by Company B and 50% by Individual A, and Company B is owned 50% by Individual B and 50% by Individual C, Individual A will be a Beneficial Owner because Individual A directly owns 50% of Company A. Individual B and Individual C will also be Beneficial Owners of Company A because they each indirectly own 25% of Company A, because they each hold 50% of Company B's 50% ownership in Company A.

Special rules exist where a trust or minor is a beneficial owner. Where a trust owns 25% or more of a Reporting Company, the trustees of the trust are Beneficial Owners of the Reporting Company, not the trust, as well as any grantor of a revocable trust or any beneficiary who has a right to demand distribution of substantially all of the assets of the trust. Rather than reporting a minor who owns 25% or more of a Reporting Company as a Beneficial Owner, the CTA requires that information about the minor's parent or legal guardian be reported instead and requires an updated BOI report be filed when the child reaches the age of majority.

Who owns equity in my company for the purposes of the CTA?

The BOI reporting rule defines ownership in a Reporting Company as including ownership of (1) equity interests, (2) profits interests, (3) any instrument convertible into an equity or profits interest, such as convertible debt, (4) any put, call, straddle or option (not including options created by a third party without knowledge of the Reporting Company) to buy or sell any of the foregoing, and (5) any other contract, arrangement or mechanism

The Corporate Transparency Act

used to establish ownership.

To determine who owns 25% percent or more of a Reporting Company, all of the ownership rights described above that an individual directly or indirectly holds must be added together as if they had been exercised as of the time of calculation and divided by all of the foregoing interests of the company outstanding and treated as exercised at the time of calculation.

Who has substantial control over my company?

The following 4 categories of individuals have **substantial control** over a Reporting Company: (1) senior officers of the company, including presidents, CFOs, CEOs, COOs, general counsel, and any other officer that performs a similar function, but excluding officers who perform purely ministerial duties such as secretaries; (2) persons who have authority over the appointment of any senior officer or the majority of the company's governing body; (3) persons who have substantial influence over important decision made by the Reporting Company; or (4) persons who have any other form of substantial control over the Reporting Company.

WHO IS THE COMPANY APPLICANT FOR MY COMPANY?

Each Reporting Company will have at least one, but no more than two, Company Applicant(s). A **Company Applicant** is an individual who (1) directly files the document that forms or registers the Reporting Company, or (2) who is primarily responsible for directing or controlling such filing, if there is more than one person involved in the filing. For instance, if you used our firm to help form your company, the lawyer who supervised and directed the preparation of the filing of your Articles of Organization, as well as the paralegal who filed the document with the Secretary of State, would each be a Company Applicant. If the lawyer filed the document directly with the Secretary of State, you would have only one Company Applicant.

Only entities formed after January 1, 2024, are required to report information about their Company Applicant(s) to FinCEN.

Q&A: Information that Must Be Reported to FinCEN

What information must a Reporting Company report to FinCEN?

The BOI reporting rule requires each Reporting Company to file an initial BOI report providing identifying information about the Reporting Company and BOI about the Reporting Company's Beneficial Owners. Each Reporting Company formed after January 1, 2024, also must provide identifying information about its Company Applicant(s).

The Corporate Transparency Act

What information must be reported about the Reporting Company?

A Reporting Company must report the following information about itself to FinCEN:

1. Full legal name.
2. All trade names or dbas. All names under which the company does business must be reported regardless of whether the name has been formally registered with the Secretary of State or other filing office.
3. Address of the company's principal place of business within the U.S. If there is no principal place of business in the U.S., then the primary location where the company does business in the U.S. must be reported.
4. For a Domestic Reporting Company, the state or tribal jurisdiction of its formation. For a Foreign Reporting Company, the first state or tribal jurisdiction where it registered in the U.S.
5. For a Domestic Reporting Company, its tax identification number issued by the IRS. For a Foreign Reporting Company that does not have a U.S. tax identification number, a tax identification number issued by the foreign jurisdiction.

What information must be reported about Beneficial Owners and Company Applicants?

All Reporting Companies must report the following information about its Beneficial Owners to FinCEN:

1. Full legal name.
2. Date of birth.
3. The individual's current residential street address.
4. A unique identifying number from one of the following non-expired documents:
 - U.S. passport;
 - Identification document issues by a State, local government, or tribe;
 - State driver's license; or
 - Only if the individual does not possess one of the above, a passport issued by a foreign government to the individual.
5. An image of the identification document.

For entities formed after January 1, 2024, a Reporting Company must also report this information about its Company Applicant(s), except that a business address must be given instead of a residential address.

If an entity that is exempt from BOI reporting is a Beneficial Owner, the only thing that must be reported is **the entity's name**.

The Corporate Transparency Act

Does my company have to collect all of this information for each of its Beneficial Owners?

Not necessarily, but if your company does not collect it, the company's Beneficial Owners must report this information directly to FinCEN, and the company must report those Beneficial Owners' FinCEN Identifiers. Every Reporting Company must report to FinCEN who its Beneficial Owners are, but those Beneficial Owners may choose, or your company may ask or require them, to obtain a FinCEN Identifier. A **FinCEN Identifier** may be obtained by any person by that person directly providing to FinCEN all of the information that a Reporting Company would have to report to FinCEN. The Beneficial Owner must then be required to provide your company with his or her FinCEN Identifier, which your company will then provide to FinCEN in lieu of BOI for that individual. Company Applicants may also obtain a FinCEN Identifier.

The web-based platform to obtain a FinCEN Identifier is still in development and will not be available until January 1, 2024.

Q&A: Timelines, Updates and How to Report BOI to FinCEN

How will my company file its initial BOI report?

FinCEN is currently developing a web-based platform that will allow a Reporting Company to provide and upload required information about the Reporting Company, its Beneficial Owners and Company Applicant(s). This platform will not go live until the CTA's effective date, January 1, 2024.

When must my company file its initial BOI report?

The BOI reporting rule currently provides two different deadlines for a Reporting Company to file its initial BOI report based on when the Reporting Company was formed or initially registered to do business in the U.S.

- **Formed or registered before January 1, 2024: No later than January 1, 2025**
- **Formed or registered on or after January 1, 2024: No later than 30 days after the date of formation or registration**

On November 29, 2023, FinCEN published a final rule **extending the deadline for filing an initial BOI report for Reporting Companies formed between January 1, 2024 and December 31, 2024, from 30 days to 90 days**, citing, among other reasons, the novelty of the CTA's BOI reporting requirements and the need for businesses to familiarize themselves with this new process. This extension provides the business community greater time to familiarize itself with FinCEN's online reporting platform, which will not go live until January 1, 2024, and to receive additional guidance from FinCEN on the reporting requirements.

The Corporate Transparency Act

Additionally, as a general rule, a previously exempt entity that no longer meets the criteria for its exemption must file an initial BOI report within 30 days of the date it fails to be eligible for the exemption.

Does my company have to update FinCEN on changes in previously reported BOI?

Yes. A Reporting Company must file an updated BOI report whenever any of the information previously reported about the Reporting Company changes. A Reporting Company must also file an updated BOI report if a Beneficial Owner's previously reported legal name, residential address, or unique identifying document number changes, and provide an updated image of such identifying document if any of this information has changed on that document. The expiration or renewal of an identifying document does not trigger an update if the unique identifying number, name, date of birth, or address reported on such document does not change as a result of such expiration or renewal. A Reporting Company is not required to provide updates if information initially reported about its Company Applicant(s) changes.

Individuals who have obtained a FinCEN Identifier are individually obligated to update FinCEN with any changes to this information, removing the obligation for the Reporting Company to update FinCEN for information changes about individuals who have provided the Company with a FinCEN Identifier.

When must my company file an updated BOI report?

A Reporting Company must file an updated BOI report within 30 days of the date any of the information about the Reporting Company or its Beneficial Owners reported in its initial BOI report or last filed updated BOI report changes.

Limitations on Use of Reported BOI

Under the CTA, the U.S. Department of Treasury is required to maintain BOI "in a secure, nonpublic database, using information security methods and techniques . . . appropriate to protect nonclassified information systems at the highest level" and to ensure that governmental authorities that access BOI only use it for authorized purposes.

Under the proposed BOI security rule, FinCEN would limit access to BOI to:

- (1) federal agencies for the furtherance of national security, intelligence, or law enforcement activity;
- (2) state, local and tribal law enforcement agencies for the furtherance of criminal or civil investigations, but only upon an order of a court of competent jurisdiction authorizing such disclosure;
- (3) a federal agency on behalf of a foreign law enforcement agency, prosecutor, judge, or central authority;

The Corporate Transparency Act

(4) financial institutions to facilitate their beneficial ownership collection requirements; and

(5) to officers of the Department of Treasury for tax administration, and would limit the use to the purpose for which the BOI was accessed.

Each such agency granted access to BOI would have to enter into an agreement with FinCEN specifying the standard, procedures, and systems that the agency will use to protect the security and confidentiality of the accessed BOI. FinCEN will audit these agencies to ensure compliance with these agreements.

Penalties for Noncompliance

The CTA makes it unlawful for any person to:

- Willfully provide, or attempt to provide, false or fraudulent BOI;
- Willfully fail to report complete or updated BOI in accordance with the BOI reporting rules; or
- Knowingly disclose or use BOI obtained through a BOI report submitted to FINCEN or a disclosure made by FinCEN except for reporting purposes or as otherwise authorized by the CTA.

The penalties for willfully providing false or fraudulent BOI or willfully failing to report complete or updated BOI include:

- A civil penalty up to \$500 for each day the violation continues; plus
- A fine of up to \$10,000, imprisonment for up to 2 years, or both.

The penalties for knowingly disclosing or using BOI for in a manner not authorized by the CTA includes:

- A civil penalty up to \$500 for each day the violation continues; plus
- A fine of up to \$250,000, imprisonment for up to 5 years, or both; or
- If the BOI was unauthorizedly used or disclosed while violating another U.S. law or as part of a pattern of illegal activity involving more than \$100,000 in a 12-month period, a fine of up to \$500,000, 10 years imprisonment, or both.

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.