



## The Corporate Transparency Act (CTA)

### Overview:

- The Corporate Transparency Act is a new federal law designed to combat money laundering, tax evasion, and other illicit financial activities by requiring “reporting companies” to disclose beneficial ownership information (BOI) about their “beneficial owners” to the Financial Crimes Enforcement Network (FinCEN), a bureau of the U.S. Department of Treasury.
- Beginning January 1, 2024, reporting companies newly formed or registered in the U.S. on or after that date will have 90 days to report BOI and “company applicant” information to FinCEN. (Note; this likely includes LLC or LP entities that convert to a Corporation in 2024.)
- Reporting companies existing or registered in the U.S. prior to January 1, 2024, will need to report BOI (not “company applicant” information) to FinCEN by January 1, 2025. These entities should assess whether they will have reporting obligations well before this deadline.
- Beginning January 1, 2025, reporting companies newly formed or registered in the U.S. on or after that date will have 30 days to report BOI.
- After the initial report, reporting companies have ongoing obligations to submit updated reports, within 30 days, should BOI change or to correct errors.
- FinCEN will collect all such information through an online portal, which has been made available to the public (see below). There are no filing fees for submitting reports. Each reporting company will receive a FinCEN ID number.

### Exemptions From Reporting

- Companies meeting all three of the following criteria:
  - (1) employs **more than 20 full-time employees** in the U.S.,
  - (2) have previously filed federal tax returns **demonstrating more than \$5 million in gross receipts or sales from U.S. sources.** and
  - (3) have an operating presence at a physical office in the U.S.

### Who are Reporting Companies:

- Covered entities include corporations, limited liability companies, limited partnerships, any domestic entity that is created or formed by the filing of a document with a Secretary of State or equivalent (e.g. a Tribal Nation).
- Sole proprietorships, general partnerships and certain trusts are outside of the scope of the CTA.

- Note that if an entity registered with a state is a wholly owned subsidiary of another reporting entity, that entity need only to report the FinCEN ID of their parent company rather than completing a duplicative report.

#### **Who are Beneficial Owners:**

- A reporting company can have multiple “beneficial owners.” The CTA states that a “beneficial owner” is any individual who, directly or indirectly, either (1) owns or controls at least **25 percent of the “ownership interests”** of a reporting company; or (2) **exercises “substantial control”** over a reporting company.
- Ownership interests are defined broadly to include stock, equity, profits interests, voting rights, convertible instruments (including convertible debt instruments), warrants, options, put rights, call rights and any other instrument, contract, arrangement, understanding, relationship or mechanism used to establish ownership.
- An individual exercises “substantial control” if they meet **any of the following criteria**:
  - They **hold senior offices** holding the position or exercising the authority of president, chief executive officer, general counsel, chief financial officer, chief operating officer or any other officer (regardless of title) who exercises the authority of these officers.
  - They have authority to appoint or remove any senior officer or a majority of the board of directors or equivalent body.
  - They direct, determine or have substantial influence over important decisions made by the reporting company, such as strategic business decisions, compensation schemes for senior officers, business reorganizations or acquisitions.
  - They exercise any other form of substantial control over the reporting company.
- There is no limit on the number of individuals who can be reported for exercising substantial control.
- Note: A member of the Board of Directors **is not** specifically considered to exercise “substantial control” unless that member can individually appoint or remove a majority of the Board or a senior officer, and would only be a beneficial owner if they hold 25% or more of the ownership interests. (This from a recent FINCEN FAQ.) This exemption should be carefully reviewed in each individual company and individual Board member, as there is also a reference to having “substantial influence over important decisions”.
- A creditor of a reporting company is not a beneficial owner, so long as the right to payment to satisfy a debt or loan is the only “ownership interest” the creditor has in the reporting company.

#### **A Reporting Company Will Have to Report the Following Information:**

- Information about the reporting company:
  - Legal name
  - Any trade names, “doing business as” (d/b/a), or “trading as” (t/a) names

- Current street address of its principal place of business
- Jurisdiction of formation or first U.S. registration
- Taxpayer Identification Number (TIN) from the IRS (foreign reporting companies without a TIN must report a tax identification number issued by a foreign jurisdiction and the name of such jurisdiction)
- Information about beneficial owners:
  - Full legal name
  - Date of birth
  - Residential address (not business)
  - A unique identifying number from a (non-expired) driver’s license, passport or other state or federal issued identification
  - A copy of the document that the unique identifying number is from
- Alternatively, an individual beneficial owner can submit its BOI to FinCEN directly via an online filing system and obtain a “FinCEN identifier,” which is a unique identifying number assigned by FinCEN to the individual. The FinCEN identifier would be issued almost immediately (similar to the way a TIN is issued).
- The reporting company may then provide FinCEN identifiers to FinCEN in its initial report in lieu of BOI. This alternative may be helpful if a reporting company does not want to collect and handle BOI, which is considered personally identifiable information that is covered by applicable privacy laws.
- Information About “Company Applicants”:
- Reporting companies formed or registered to do business in the U.S. on or after January 1, 2024, will be required to report “company applicant” information in addition to BOI for “beneficial owners.” Reporting companies existing or first registered prior to January 1, 2024, do not have to report “company applicant” information.
- Who Are Company Applicants:
  - Company applicants are (1) the individual who directly files the document that creates, or first registers, the reporting company; and (2) the individual that is primarily responsible for directing or controlling the filing of the relevant document.
  - Paralegals and lawyers could be company applicants. For example, Individual B, paralegal at a law firm, directly forms an entity by filing a document with a Secretary of State, and Individual A, lawyer at a law firm, was primarily responsible for directing or controlling the filing. Individuals A and B are both company applicants in this scenario.
  - Reporting companies need only report company applicant information for up to two company applicants.
- Reporting companies are required to report essentially the same information for company applicants as reported for “beneficial owners” other than the residential address requirement.
  - Full legal name
  - Date of birth

- Business address (not residential)
- A unique identifying number from a (non-expired) driver's license, passport or other state/federal issued identification
- A copy of the document the unique identifying number is from
- As discussed above, company applicants can also obtain FinCEN identifiers.
- A reporting company will have to indicate the type of filing it is making (that is, whether it is filing an initial report, a correction of a prior report, or an update to a prior report).

### **Updates/Corrections:**

- After the initial filing is made, reporting companies are required to submit updated reports within 30 days of when a change occurs to any information reported about the reporting company or its "beneficial owners." There is no de minimis exception. For example, each of the following scenarios require an updated report: the reporting company hires a new senior officer, a beneficial owner dies, a beneficial owner gets married and changes their name, or when a beneficial owner that was a minor child reaches the age of majority. Also if a new passport or driver's license, with a new identification number is issued.
- Reporting companies are required to submit a corrected report revising previously reported inaccurate information (whether the inaccurate information related to BOI or company applicant information, discussed below) within 30 days of when the reporting company becomes aware of or has reason to know of the inaccuracy.

### **Penalties for Noncompliance**

- The CTA imposes civil penalties of **\$591** per day that the violation continues and fines of up to \$10,000 or imprisonment for up to two years (or both) for any person who willfully provides, or attempts to provide, false or fraudulent BOI to FinCEN, or willfully fails to report complete or updated BOI to FinCEN. Senior officers of a reporting company that fails to file a report may be accountable for that failure.
- Those who submit incorrect information to FinCEN are, however, shielded from these penalties provided they can prove that: (1) they had no knowledge of the inaccuracy; (2) they were not knowingly trying to evade the CTA requirements; and (3) the information is corrected within 90 days of the initial filing.

### **Confidentiality of Information**

- Only Government officials (Federal, state and local) can obtain the information after submitting a request and related to law enforcement.
- Banks will have access in certain circumstances, but only with the approval of the reporting company.

### **How to File**

FinCEN has created an e-filing capability at: <https://www.fincen.gov/boi> . This site also contains additional information, including a "Small Entity Compliance Guide" and FAQs.