



IMPACT OF THE CORPORATE TRANSPARENCY ACT *(Effective January 1, 2024)*

Small Business is Introduced to FinCEN

Patrick D. Crowley, JD* CLU

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*Boi I got a bad news
Guess I'm a bad news
Lil Boi, Bad News Cypher vol.2*

Beneficial Ownership Information (BOI) Reporting Requirements

Unless eligible for an exemption, starting on January 1, 2024, at least 32 million business entities nationwide will be required to report personal information about their owners and senior officers to the Financial Crimes Enforcement Network (FinCEN), a bureau of the U.S. Treasury Department. Those impacted will be, primarily, business entities incorporated, organized, or registered to do business in any state must disclose information relating to its owners, officers, and controlling persons with the Financial Crimes Enforcement Network (FinCEN) pursuant to the newly enacted Corporate Transparency Act (CTA)¹. To reduce terrorist financing, money laundering, and other illegal activities, Congress passed the CTA into law. While the CTA was passed in 2021, it did not go into effect right away pending FinCEN's preparation of regulations and to provide business with an opportunity to become familiar with the new law. Almost two years later, FinCEN issued their final set of regulations in September 2022. ²

FinCEN made the effective date for *new businesses* and their owners *January 1, 2024*.

¹ Block Advisors, *The Corporate Transparency Act*, <https://www.blockadvisors.com/resource-center/news-center/corporate-transparency-act/>

² Duane Morris, *The New Corporate Transparency Act* https://www.duanemorris.com/alerts/new_corporate_transparency_act_what_are_reporting_filing_requirements_business_0623.html#:~:text=While%20the%20CTA%20was%20passed,final%20rule%20in%20September%202022.

Who is Covered?

Companies required to report include domestic and foreign *privately held entities*. These will typically be *smaller and otherwise unregulated companies*. For businesses formed in the United States, including corporations (S and C corps), limited liability companies, or other entities **whose creation requires filing a document with the Secretary of State** or similar office under the laws of that each state. (While foreign entities are covered as well, the focus here will be solely on U.S. based companies.)³

What's Required?

New companies are those **formed on or after** January 1, 2024, and they must file the initial report within 30 days of creation or registration.

Existing reporting companies have **until January 1, 2025**, to file an initial report.

Updates and corrections to beneficial ownership information require the filing of a report within 30 days.

Regardless of when, the reporting breaks into two areas.

Reporting Company Information: Requirements here include the full name, DBA, address, jurisdiction of formation or registration, TIN, or other unique tax ID number.

Beneficial Owners Information (BOI): Here the full name, DOB, address, photo ID with ID number shown of each beneficial owner is required. There is a special rule for reporting companies owned by exempt entities stating that if an individual is deemed to be a *beneficial owner* exclusively due to his or her ownership of the exempt entity, then the name of the exempt entity may be reported instead. (These entities will still need to provide information on those who exercise *substantial control* over the entity.)

Beneficial Owners (BO) are not just the official shareholders, but also individuals who, directly or indirectly, exercise substantial control over the company. This includes senior officers (president, CEO, COO, CFO, GC) and anyone with the ability to make important decisions on behalf of the reporting company. *An individual who, directly or indirectly, owns or controls at least 25% of the ownership interests of the reporting company is covered.* This includes Trusts owning 25% or more of an entity. Beneficial owners who hold substantial control over the company are the targets.

³ FinCEN, *Beneficial Ownership Information Reporting Rule Fact Sheet*, <https://www.fincen.gov/beneficial-ownership-information-reporting-rule-fact-sheet>

Company Applicants are the individuals who file a document with the Secretary of State that forms the reporting company. For example, the attorney who files the certificate of organization with the state to form an LLC would be the LLC's company applicant.

Caveat - Company applicant information needs to be provided for *entities formed prior to January 1, 2024*.⁴

REPORTING COMPANIES	BENEFICIAL OWNERS	COMPANY APPLICANTS
<ul style="list-style-type: none"> • Full legal name of company • Trade name or "doing business as" (dba) • Current street address of the principal place of business in the U.S. • State of formation • TIN/EIN 	<ul style="list-style-type: none"> • Full legal name of individual • Date of birth • Current residential street address • Unique identifying number from passport, state ID, or driver's license • Image of the individual's passport, state ID, or driver's license 	<ul style="list-style-type: none"> • Full legal name of individual • Date of birth • Current residential street address (or business street address for the business company applicant if it is in the course of such company's business to form entities) • Unique identifying number from passport, state ID, or driver's license • Image of the individual's passport, state ID, or driver's license

Who Has Control if a Trust is Involved?

Additionally, certain *trust arrangements*, or those individuals or entities acting as an intermediary, custodian, or agent on behalf of another can be seen as a control person.

From an estate planning perspective, ownership in a company is often be found within a trust established by a shareholder/owner seeking to shift the growth in share value to the next generation.

If a trust owns 25% or more of a reporting company or has substantial control over the reporting company, a trust is a beneficial owner.

⁴ *Ibid*

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However, the trust *itself* will not be the beneficial owner because the beneficial owner *must be an individual*. The terms of the trust would have to be reviewed by an attorney to determine who is the beneficial owner if a trust has substantial control or ownership over a reporting company.

An individual is seen to have control or ownership of trust assets if the individual is serving as trustee or otherwise has authority to dispose of trust property.

A trust beneficiary who is the sole permissible recipient of trust income and principal, or who has authority to withdraw trust assets, is considered to have ownership or control of the trust property.

The grantor of a trust is deemed to have ownership or control if the grantor has the authority to revoke the trust or otherwise withdraw trust assets.

Often, for more complicated irrevocable trusts, only the trustee will be deemed to have control or ownership of the trust assets.⁵

Where Do I File? Who Will Have Access?

When filing, you must do so in the non-public cloud-based database maintained by FinCEN. (The agency promises it will be secure with the appropriate safeguards.⁶ Indicative of the fact that can rest easy, the agency named their “secure system” the *Beneficial Ownership Secure System (BOSS)*, even before the tech framework was completed.)

Access will be limited to the panoply of Federal law enforcement, national security, and intelligence agencies. Also State, local, and Tribal law enforcement agencies operating under a court order can view the information. Select foreign agencies engaged in law enforcement, national security or intelligence will have access. Financial institutions subject to customer due diligence requirements will have entrée. And, finally, Treasury Department officers and employees, including tax administration (a/k/a, the IRS).

⁵ BrownWinick Law, *How Business Entities Held In Trusts are Treated Under the CTA*, <https://www.brownwinick.com/insights>

⁶ FinCEN, *Beneficial Ownership Information Reporting Rule Fact Sheet*

Consequences

Penalties for noncompliance or misuse of beneficial ownership information fall under two categories:

- Civil and criminal penalties for willful reporting violations, including fines of up to \$10,000 and imprisonment for not more than two years.
- Civil and criminal penalties for unauthorized disclosure and use of beneficial ownership information also exist.

Who is Exempt?

FinCEN has provided an extensive list of entities exempted to the term *reporting company*. * These exceptions include firms in industries that are already regulated:

- Publicly traded companies
- Banks
- Credit unions
- Governmental entities
- Insurance companies operating in the U.S.
- Securities brokers
- Public utility companies
- Investment companies and advisers
- Venture capital fund advisers
- Accounting firms
- Pooled investment vehicles
- Inactive entities not owned by a foreign person
- *Tax-exempt entities* (such as nonprofits, political organizations, and certain trusts)
- Subsidiaries of exempt entities
- ***Entities that employ more than 20 employees, operate at a physical office in the United States, and filed federal tax returns demonstrating more than \$5 million in gross receipts or sales.***

While not specifically listed, *sole proprietorships and general partnerships*, since they are not typically required to register with or be formed under a Secretary of State's office, are both exempt.⁷

⁷ McCarty Law, *Complying with the Corporate Transparency Act – Part II*, <https://mccartylaw.com/>
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There are *five exceptions for when an individual who otherwise would be a beneficial owner of a Reporting Company is exempt*:

- (i) a minor child if the Reporting Company provides information about a parent or legal guardian;
- (ii) (an individual acting as a nominee, intermediary, custodian, or agent on behalf of another individual;
- (iii) an employee, acting solely as an employee, whose substantial control over or economic benefits from such entity are derived solely from the employment status of the employee and who is not a senior officer;
- (iv) an individual whose only interest is a future interest through a right of inheritance; and
- (v) a creditor.⁸

Summary

The immediate impact for non-exempt existing companies, most commonly those with under 20 employees and less than \$5 million in sales, will be in making sure to meet the initial compliance deadline (01/01/2025) when reporting the information needed on companies, BOIs, BOs, and Applicants, along with any updates. Existing companies will need to work with their attorney in preparing its filing as required.

It should become part of the protocol whenever a new entity is registered with the Secretary of State (or its equivalent).

The impact on planning, especially for larger estates where entity planning is often utilized, will be in ensuring that the registration takes place.

Because the CTA mandates a new type of reporting to the government, previously unknown in the U.S. it may result in a lessening in the use of certain estate planning techniques centered around using a business entity.

It is all encompassing and will affect many individuals who have undertaken estate planning, asset protection planning, own real estate and much more. Complying with the new CTA rules will cost money, be cumbersome, and generate penalties for noncompliance.

⁸ 31 C.F.R. § 1010.380(d)(3).

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The reach can be far and unexpected. Estate planning might include the creation of one or more LLCs designed to hold other assets. For example, it might be easier and less costly to transfer a disparate multitude of assets into an LLC then transfer slices of that LLC's ownership interests to various family trusts. They are also used to accommodate valuation discounts on assets held inside.

For asset protection purposes, LLCs are often formed to hold real estate (e.g., rental property). Alternatively, they may also be formed to hold real estate or other tangible property (e.g., art) that is physically located in a state other than your primary state (domicile) to avoid probate in those other states.

To start planning, begin compiling a list of every entity you are an owner of, or involved with, and have your attorney review the reporting implications for that list of entities. Also provide the necessary information on each beneficial owner, including trusts. **

For additional information please review:

* FINCEN Small Entity Compliance Guide - BOI Reporting Requirements, v.1.0, published September 2023.

** FINCEN Beneficial Ownership Information Reporting FAQ, published September 18, 2023. <https://www.fincen.gov/boi-faqs> or contact financial advisor here at *Strategic Financial Partners*.