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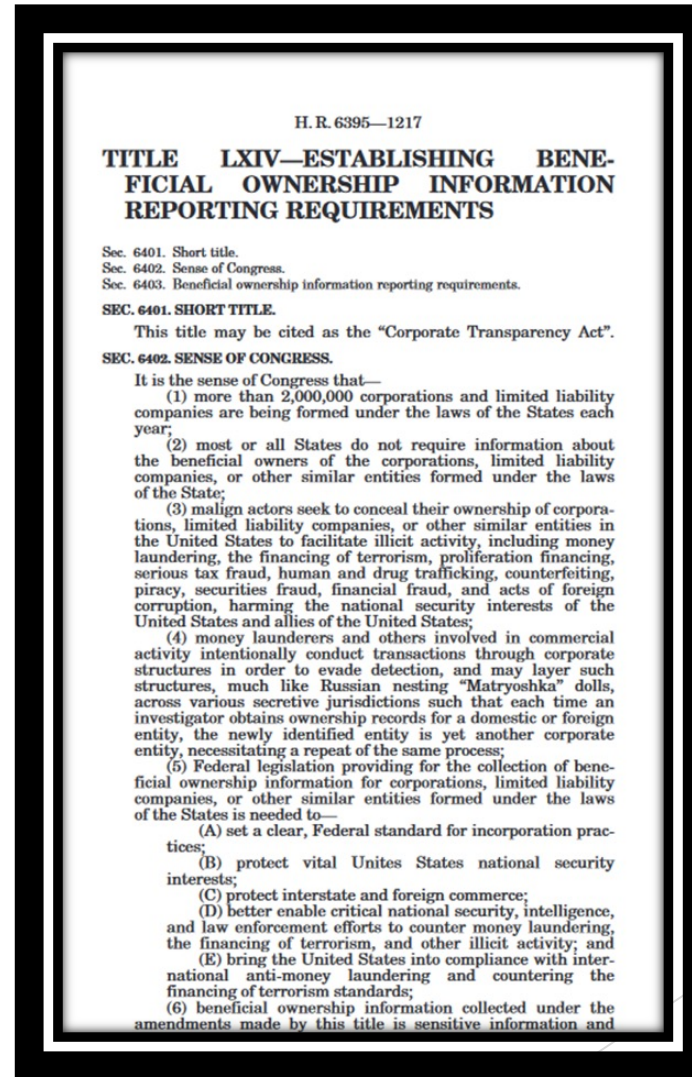
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Corporate Transparency Act

The Corporate Transparency Act (CTA) is a federal law enacted on January 1, 2021 and effective January 1, 2024.

It was passed as part of an Anti-Money Laundering Act to combat money laundering, tax fraud, and other illicit activity by capturing ownership information of certain companies.

Under the CTA, a “Reporting Company” must provide information about its Beneficial Owners and Company Applicants to the federal government.



Key Terms Associated with the CTA

“FinCEN” is the U.S. Department of the Treasury Financial Crimes Enforcement Network.

“Beneficial Ownership Information” (BOI) is information regarding the individuals who ultimately own or substantially control the company.

“Reporting Company” is a corporation, a limited liability company, or other company created in the United States by filing a document with a Secretary of State or any similar office under the law of a state or Indian tribe and a foreign company registered to do business in any U.S. state or Indian tribe.

“Company Applicant” is an individual who directly files or is primarily responsible for the filing of the document that creates or registers the company.



What Do I Need To Do and When?

If you qualify as a “Reporting Company” (and most companies do),
you must file a BOI Report with FinCEN

- ▶ For companies created or registered BEFORE THIS YEAR (Before January 1, 2024), you must file a report by the end of this year (December 31, 2024)
- ▶ For companies created or registered THIS YEAR (2024), you must file a report within 90 days of registering the new company
- ▶ For companies created or registered NEXT YEAR AND THEREAFTER (2025+), you must file within 30 days of registering the new company

Who Has to Report?

Any “Reporting Company” that is not exempt must report.

Reporting Company: a corporation, a limited liability company, or other company created in the United States by filing a document with a secretary of state or any similar office under the law of a state or Indian tribe; or a foreign company registered to do business in any U.S. state or Indian tribe by such a filing.

23 Exemptions

Most of these are highly regulated businesses with pre-existing legal reporting requirements.

Securities reporting issuer

Governmental authority

Bank

Credit union

Depository institution holding company

Money services business

Broker or dealer in securities

Securities exchange or clearing agency

Other Exchange Act registered entity

Investment company or investment adviser

Venture capital fund adviser

Insurance company

State-licensed insurance producer

Commodity Exchange Act registered entity

Accounting firm

Public utility

Financial market utility

Pooled investment vehicle

Tax-exempt entity

Entity assisting a tax-exempt entity

Large operating company

Subsidiary of certain exempt entities

Inactive entity

Exemptions

▶ Broker or Dealer in Securities

The entity is a “Broker” or “Dealer” as those terms are defined in Section 3 of the Securities Exchange Act of 1934; AND

The entity is registered under Section 15 of the Securities Exchange Act of 1934.

▶ Investment Company or Investment Adviser

The entity is an “Investment Company” or “Investment Adviser” defined in Section 3 of the Investment Company Act of 1940 and Section 202 of the Investment Advisers Act of 1940, respectively; AND

The entity is registered with the Securities and Exchange Commission under either The Investment Company Act of 1940 or The Investment Advisers Act of 1940.

Exemptions

▶ Accounting Firms

The entity is a public accounting firm registered in accordance with Section 102 of the Sarbanes-Oxley Act of 2002.

- In other words, the entity is registered with the Public Company Accounting Oversight Board and prepares or issues audit reports for publicly traded companies or plays a substantial role in the process.

Exemptions

▶ Insurance Company

The entity is an “Insurance Company” as defined in Section 2 of the Investment Company Act of 1940.

▶ State-licensed Insurance Producer

The entity is an Insurance Producer that is authorized by a State and subject to supervision by the insurance commissioner or a similar official or agency of a State; **AND**

The entity has an operating presence at a physical office within the United States.

§ 80a-2. Definitions

(17) “**Insurance Company**” means a company which is organized as an insurance company whose primary and predominant business activity is the writing of insurance or the reinsuring of risks underwritten by insurance companies, and which is subject to supervision by the insurance commissioner or a similar official or agency of a State; or any receiver or similar official or any liquidating agent for such a company, in his capacity as such.

Exemptions

▶ Governmental Authority

The entity is established under the laws of the United States, an Indian tribe, a State, or a political subdivision of a State, or under an interstate compact between two or more States; **AND**

The entity exercises governmental authority on behalf of the United States or any such Indian tribe, State, or political subdivision.

Exemptions

► Tax-Exempt Entity

The entity is an organization that is described in Section 501(c) of the Internal Revenue Code of 1986 (Code) (determined without regard to Section 508(a) of the Code) and exempt from tax under Section 501(a) of the Code; OR

The entity is an organization that is described in Section 501(c) of the Code and was exempt from tax under Section 501(a) of the Code, but lost its tax-exempt status less than 180 days ago; OR

The entity is a political organization, as defined in Section 527(e)(1) of the Code, that is exempt from tax under Section 527(a) of the Code; OR

The entity is a Charitable Trust or a Split Interest Trust as defined in Section 4947(a) of the Code.

Exemptions

- ▶ **Large Operating Company (in a nutshell)**

More than 20 full-time US employees

AND

More than \$5,000,000 in annual gross receipts or sales

Exemptions

▶ Large Operating Company (all 6 must apply)

1. The entity employs more than 20 full-time employees. “Full-time employee” means, with respect to a calendar month, an employee who is employed an average of at least 30 hours of service per week with an employer; AND
2. More than 20 full-time employees of the entity are employed in the United States; AND
3. The entity has an operating presence at a physical office within the United States; AND
4. The entity filed a Federal income tax or information return in the United States for the previous year demonstrating more than \$5,000,000 in gross receipts or sales; AND
5. The tax return filed by the entity demonstrating the gross receipts or sales was Form 1120, consolidated Form 1120, Form 1120-S, Form 1065, or other applicable IRS form; AND
6. When gross receipts or sales from sources outside the United States, as determined under the Federal income tax principle, are excluded from the entity’s amount of gross receipts or sales, the amount remains greater than \$5,000,000.

Exemptions

▶ Inactive Entity (all 6 must apply)

1. The entity was in existence on or before January 1, 2020; AND
2. The entity is not engaged in active business; AND
3. The entity is not owned by a foreign person, whether directly or indirectly, wholly or partially. “Foreign person” means a person who is not a citizen or resident of the United States, domestic partnership and corporation, and other estates and trusts;
4. The entity has not experienced any change in ownership in the preceding twelve-month period; AND
5. The entity has not sent or received any funds in an amount greater than \$1,000, either directly or through any financial account in which the entity or any affiliate of the entity had an interest, in the preceding twelve-month period; AND
6. The entity does not otherwise hold any kind or type of assets, whether in the United States or abroad, *including* any ownership interest in any corporation, limited liability company, or other similar entity.

What have we learned so far?

- ▶ A preexisting Reporting Company that is not exempt must file a report with FinCEN before the end of 2024.
- ▶ A Reporting Company newly formed in 2024 that is not exempt must file within 90 days of formation.
- ▶ A Reporting Company formed on or after January 1, 2025 that is not exempt must file within 30 days of formation.

But what has to be filed?

A BOI Report has to be filed

- ▶ Under the CTA, a non-exempt Reporting Company must file a Beneficial Ownership Information Report electronically with FinCEN.
- ▶ A Beneficial Ownership Information Report (BOI Report) provides information about individuals who satisfy the definition of a “Beneficial Owner” and a “Company Applicant”.

Beneficial Owners

- ▶ A Beneficial Owner is an **individual** who:
 1. owns or controls at least 25 percent of a company;
 - OR**
 2. has “substantial control” over the company.

- ▶ There can be multiple Beneficial Owners.
 - ❑ More than one individual may own or control 25% of the ownership interests of the company.
 - ❑ Those owners may or may not be the same individuals who exert substantial control.
 - ❑ There is no maximum number of beneficial owners who must be reported.

What is Substantial Control?

- ▶ An individual exercises substantial control over a Reporting Company if the individual meets any of four general criteria:
 1. Is a Senior Officer (*e.g., President, Chief Financial Officer, General Counsel, Chief Executive Officer, Chief Operating Officer*);
 2. Has authority to appoint or remove any Senior Officers or a majority of directors of the Reporting Company;
 3. Is an important decision-maker; or
 4. Has any other form of substantial control over the Reporting Company.

Which Owners must be reported?

- ▶ Reporting companies are required to identify all individuals who own or control at least 25 percent of the ownership interests of the company.
- ▶ Any of the following may be an ownership interest: equity, stock, or voting rights; a capital or profit interest; convertible instruments; options or other non-binding privileges to buy or sell any of the foregoing; and any other instrument, contract, or other mechanism used to establish ownership.
- ▶ A reporting company may have multiple types of ownership interests.
- ▶ All ownership interests are taken into account when calculating if an individual has 25% or more of the ownership interest.

Who is not reported as a Beneficial Owner?

- ▶ Any of the following who would otherwise qualify as a Beneficial Owner do not have to be included in a BOI Report.
 - ❑ Minor Child (under 18 in Ohio)*
 - ❑ Nominee, intermediary, custodian, or agent
 - ❑ Employee
 - ❑ Inheritor
 - ❑ Creditor

**Parent information is provided*

What has to be reported?

- ▶ For A Beneficial Owner or a Company Applicant:
 - ❑ Full Legal Name
 - ❑ Date of Birth
 - ❑ Complete address (residential)
 - ❑ Driver's license number, State ID number, or Passport number, and a copy of that document

A Company Applicant may provide a business address if the individual is registering the entity in the course of their business, such as a paralegal or attorney.

Who is My Company Applicant?

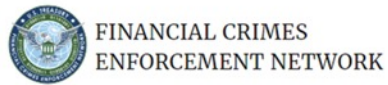
- ▶ Reporting Companies formed on or after January 1, 2024 must report its Company Applicant.
- ▶ A Company Applicant must be an individual and may not be a legal entity.
- ▶ The “direct filer” is the Company Applicant.
- ▶ An individual who “directs or controls the filing action” is a Company Applicant.
- ▶ If more than one individual is involved in the filing, then two Company Applicants must be reported.
- ▶ No reporting company will have more than two Company Applicants.

Must I report my Company Applicants?

- ▶ A Reporting Company is required to report its Company Applicants if it is either:
 - ❑ a domestic reporting company created on or after January 1, 2024; **OR**
 - ❑ a foreign reporting company first registered to do business in the United States on or after January 1, 2024.

How do I file?

▶ <https://boiefiling.fincen.gov/>



[BOI E-FILING](#) | [FILE BOIR](#) | [HELP](#)

Welcome to the BOI E-Filing System

The BOI E-Filing System supports the electronic filing of the Beneficial Ownership Information Report (BOIR) under the Corporate Transparency Act (CTA). The CTA requires certain types of U.S. and foreign entities to report beneficial ownership information to the Financial Crimes Enforcement Network (FinCEN), a bureau of the U.S. Department of the Treasury.



File BOIR

Need to file a BOIR?
Click here!



Help

Looking for more
information? Click here



Beneficial Ownership Information (BOI) Reporting

Need to file a BOIR? Click here!

GET STARTED



Bank Secrecy Act (BSA) Reporting

Need to file another type of
BSA report? Click here!

BSA E-FILING

News & Announcements

Jan 04 2024

Need assistance? Go to the [Help](#) section in the blue banner to find filing instructions and other guidance materials.

Filing BOI



FINANCIAL CRIMES
ENFORCEMENT NETWORK

[BOI E-FILING](#) | [FILE BOIR](#) | [HELP](#)

Beneficial Ownership Information Report (BOIR)

OMB No. 1506-0076

Complete the report in its entirety with all required information. Fields marked with an asterisk (*) symbol are the fields that, *at a minimum*, must be completed by all companies to file the report. Reporting companies, however, must include all information 31 CFR 1010.380(b) requires them to provide, regardless of whether a field is marked with an asterisk (*) symbol. These information requirements are summarized above under HELP.

Filing Information

Reporting Company

Company Applicant(s)

Beneficial Owner(s)

Submit

Filing Information

Need help?

*1. Type of filing:

- a. Initial report
- b. Correct prior report
- c. Update prior report
- d. Newly exempt entity

2. Date prepared (auto-filled)

01/18/2024

Previous

Next

What is a FinCEN ID?

- ▶ A separate Beneficial Ownership Information Report must be filed for each Reporting Company even if two or more Reporting Companies have the same Beneficial Owners.
- ▶ A Beneficial Owner (or Company Applicant) can obtain a FinCEN Identifier which would be entered on the BOI Reports in lieu of that Beneficial Owners personal information.
- ▶ If the information of an individual with a FinCEN Identifier changes, then only the FinCEN Identifier must be updated (and not the BOI Reports of the Reporting Companies).

FinCEN ID



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FINCEN ID | HELP

Welcome to the FinCEN ID Application for Individuals

Sign in or Create an Account with  LOGIN.GOV



What is a FinCEN ID for individuals?

A FinCEN ID is a unique identifying number issued to an individual by FinCEN. Although there is no requirement to obtain a FinCEN ID, doing so can simplify the reporting process.



What does a FinCEN ID do for individuals?

An individual beneficial owner or company applicant's FinCEN ID can be reported instead of required information about that individual on the reporting company's Beneficial Ownership Information Report (BOIR) submitted to FinCEN.



How does an individual get a FinCEN ID?

To obtain a FinCEN ID for yourself, click the Create Account button to create an account and begin the application for a FinCEN ID. If you already have an account, login in to enter your identifying information on the FinCEN ID application. If you have additional questions, visit our Help Page.



Should I get a FinCEN ID?

- ▶ There is no requirement to obtain a FinCEN ID.
- ▶ A separate Beneficial Owner Report must be filed for each Reporting Company even if these Reporting Companies all have the same Beneficial Owner.
- ▶ Rather than submit the same information in multiple Beneficial Owner Reports, A Beneficial Owner (or Company Applicant) can obtain a FinCEN Identification number. Once obtained, this number can be entered on the reporting forms in lieu of separately listing all the Beneficial Owner Information.
- ▶ If there is a reportable change in ownership or control of the Reporting Company's Beneficial Owner, a Beneficial Owner that has a FinCEN identification number can update the FinCEN identification number through FinCEN and all Reporting Companies associated with that FinCEN identification number will automatically be updated.

What if Something Changes?

- ▶ If there is a change to the BOI Report that was filed, you must file an updated BOI Report no later than 30 days after the date on which the change occurred.
 - Changes include:
 1. a change in ownership or control of the Reporting Company; or
 2. a change in address, change of name, or new driver's license number for a Beneficial Owner.
 - This also applies to changes in information submitted by an individual to obtain a FinCEN identifier.
- ▶ A Reporting Company is not required to file an updated report for any changes to previously reported personal information about a Company Applicant.

What if the BOI Report has an Error?

- ▶ An updated BOI Report must be filed no later than 30 days after the date your company became aware of, or had reason to know of, the inaccuracy.
 - This includes any inaccuracy in the required information provided about your company, its Beneficial Owners, or its Company Applicants.
 - This also applies to inaccuracies in information submitted by an individual to obtain a FinCEN Identifier.

What if a Reporting Company's Exempt Status Changes?

- ▶ If a Reporting Company qualifies for an Exemption after filing its initial BOI Report, then the Reporting Company should file an updated BOI Report to report its exempt status.
- ▶ If a Reporting Company no longer satisfies all of the criteria of a particular exemption, then the Reporting Company must file a BOI Report within 30 days of it no longer being exempt.

Who has access to my information?

- ▶ FinCEN will permit Federal, State, local, and Tribal officials, as well as certain foreign officials, to obtain Beneficial Ownership Information for authorized activities related to national security, intelligence, and law enforcement.
- ▶ Financial institutions will have access to Beneficial Ownership Information in certain circumstances, with the consent of the Reporting Company.
- ▶ FinCEN has indicated that Beneficial Ownership Information reported to FinCEN will be stored in a secure, non-public database “using rigorous information security methods and controls typically used in the Federal government to protect non-classified yet sensitive information systems at the highest security level.”

What if I don't file?

- ▶ Willfully failing to report complete or updated Beneficial Ownership Information or willfully providing or attempting to provide false or fraudulent Beneficial Ownership Information may result in civil or criminal penalties.
 - ❑ \$500 for each day that the violation continues
 - ❑ Criminal penalties including imprisonment for up to two years and/or a fine of up to \$10,000.
- ▶ Senior officers of an entity that fails to file a required BOI report may be held accountable for that failure.
- ▶ Additionally, a person may be subject to civil and/or criminal penalties for willfully causing a company not to file a required BOI report or to report incomplete or false beneficial ownership information to FinCEN.
- ▶ There are no penalties for filing an inaccurate BOI report provided it is corrected within 90 calendar days of when it was filed.

Summary and Takeaways

- ▶ All registered entities have to file a BOI Report unless qualifies for one of the 23 Exemptions.
- ▶ Determining who qualifies as a “Beneficial Owner” may be more complex than it first appears depending on ownership and management structures of the entity.
- ▶ Strict timelines are associated with compliance – initial reporting, corrections and errors.
- ▶ Reporting Companies and individuals have a continuing obligation to update BOI reports and FinCEN ID, if applicable.

Thank You for joining us!

This presentation is available at <https://pselaw.com/news/> or
by scanning this QR Code



For assistance with the new CTA filing regulations,
please contact the lawyers at Pickrel, Schaeffer & Ebeling
at 937.223.1130 or pse@pselaw.com.