

White Paper: Corporate Transparency Act Reporting Requirements

Introduction

The Corporate Transparency Act (CTA) was enacted in response to increasing worries about the use of anonymous shell companies for illicit activities such as money laundering and terrorism financing. The CTA marks a major shift from the current corporate reporting norms in the United States. Under this law, specific entities are required to disclose their beneficial ownership details to the Financial Crimes Enforcement Network (FinCEN), a division of the U.S. Department of the Treasury. The CTA reporting requirements went into effect on January 01, 2024.

The willful failure to report complete or updated beneficial ownership information (BOI) to FinCEN, or the willful provision of or attempt to provide false or fraudulent BOI may result in a civil or criminal penalties, including civil penalties of up to \$500 for each day that the violation continues, or 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.

The information below was originally published by the U.S. Department of the Treasury, which we've edited for conciseness and clarity. We do not assert any ownership over the information presented here, and much of it has been republished in its original form.

Reporting Timeline

Company Entity Registration Date	BOI Reporting Deadline
Created/registered prior to Jan. 01, 2024	Jan. 01, 2025
Created/registered after Jan. 01, 2024, but before Jan. 01, 2025	90 days after creation/registration is effective
Created/registered after Jan. 01, 2025	30 days after creation/registration is effective
Updates/corrections to BOI	Within 30 days

Reporting Company

The Reporting Rule requires that all “reporting companies” file BOI reports with FinCEN within the previously specified timeframes. A reporting company is any entity that meets the “reporting company” definition and does not qualify for an exemption. There are two categories of reporting companies: a “domestic reporting company” and a “foreign reporting company”. This paper will only focus on domestic reporting companies.

If the domestic company is a (i) corporation, (ii) limited liability company, or (iii) any other entity that was created by a filing of a document with a secretary of state or any similar office, then **unless** it meets an exemption, **it is** a reporting company.

Exemptions

There are currently 23 exemptions to the reporting requirements. They are:

1.	Securities reporting issuer	13.	State-licensed insurance producer
2.	Governmental authority	14.	Commodity Exchange Act registered entity
3.	Bank	15.	Accounting firm
4.	Credit union	16.	Public utility
5.	Depository institution holding company	17.	Financial market utility
6.	Money services business	18.	Pooled investment vehicle
7.	Broker or dealer in securities	19.	Tax-exempt entity
8.	Securities exchange or clearing agency	20.	Entity assisting a tax-exempt entity
9.	Other Exchange Act registered entity	21.	Larger operating company
10.	Investment company or investment advisor	22.	Subsidiary of certain exempt entities
11.	Venture capital fund advisor	23.	Inactive entity
12.	Insurance company		

Beneficial Owners and Company Applicants

The reports contain information about the entity itself and two categories of individuals:

1. ***Beneficial Owners***
2. ***Company Applicants***

Beneficial Owners

A beneficial owner is any individual who, directly or indirectly:

1. Exercises ***substantial control*** over a reporting company; - OR -
2. ***Owns or controls at least 25 percent*** of the ownership interests of a reporting company.

Substantial Control

An individual exercises substantial control over a reporting company if the individual meets any of four general criteria: (1) the individual is a senior officer; (2) the individual has authority to appoint or remove certain officers or a majority of directors of the reporting company; (3) the individual is an important decision-maker; or (4) the individual has any other form of substantial control over the reporting company.

Reporting companies are required to identify all individuals who exercise substantial control over the company. There is no limit to the number of individuals who can be reported for exercising substantial control.

Ownership Interest

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.

Note for trusts: The following individuals hold ownership interests in a reporting company and must be reported:

- A trustee or other individual with the authority to dispose of trust assets.
- A beneficiary who is the sole permissible recipient of trust income and principal or who has the right to demand a distribution of or withdraw substantially all the trust assets.
- A grantor or settlor who has the right to revoke or otherwise withdraw trust assets.

Company Applicants

A reporting company is required to report its company applicants if it is a domestic reporting company created on or after January 1, 2024.

A reporting company is not required to report its company applicants if it is a domestic reporting company created before January 1, 2024.

Each reporting company that is required to report company applicants will have to identify and report to FinCEN at least one company applicant, and at most two. All company applicants must be individuals. Companies or legal entities cannot be company applicants.

There are two categories of company applicants – the “**direct filer**” and the individual who “**directs or controls the filing action.**” The first category (direct filer) must be identified by all reporting companies that have a company applicant reporting requirement. The second category (directs or controls the filing action) may not be applicable to all reporting companies that have a company applicant reporting requirement. The second category of company applicants is only required to be reported when more than one individual is involved in the filing of the document that created or first registered the company. 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.

Company Applicant Category 1: Direct filer

This is the individual who directly filed the document that created a domestic reporting company, or the individual who directly filed the document that first registered a foreign reporting company. This individual would have physically or electronically filed the document with the secretary of state or similar office.

Company Applicant Category 2: Directs or controls the filing action

The other possible company applicant is the individual who was primarily responsible for directing or controlling the filing of the creation or first registration document. This individual is a company applicant even though the individual did not actually file the document with the secretary of state or similar office.

Inclusion of Professional Services

It is important to clarify that the term “company applicants” encompasses all professional service providers involved in the formation of the reporting company, including attorneys, paralegals, certified public accountants (CPAs), and other similar professionals. This broad interpretation means that any such professionals who play a role in creating or registering the reporting company are subject to the reporting requirements as company applicants. Currently, there is no specific exemption in the regulation for these individuals. Therefore, if an attorney, paralegal, CPA, or similar professional is directly involved in filing the document that created or first registered the company, or if they were primarily responsible for directing

or controlling the filing action, they are considered company applicants and must be reported to FinCEN as such.

Required Information Checklist

The following list identifies the information that are required to collected and reported about a company and its beneficial owners and company applicants.

Reporting Company

- **Full legal name**
- **Any trade name or “doing business as” (DBA) name**
 - Report all trade names or DBAs.
- **Complete current U.S. address**
 - Report the address of the principal place of business in United States, or, if the reporting company’s principal place of business is not in the United States, the primary location in the United States where the company conducts business.
- **State or Tribal territory**
- **Internal Revenue Service (IRS) Taxpayer Identification Number (TIN) (including an Employer Identification Number (EIN))**

Each Beneficial Owner and Company Applicant

- **Full legal name**
- **Date of birth**
- **Complete current address**
 - Report the individual’s residential street address, except for company applicants who form or register a company in the course of their business, such as paralegals. For such individuals, report the business street address. The address is not required to be in the United States.
- **Unique identifying number and issuing jurisdiction from, and image of, one of the following non-expired documents:**
 - U.S. passport
 - State driver’s license
 - Identification documents issued by a state, local government, or tribe.
 - If an individual does not have any of the previous documents, foreign passport.

NOTE: Not all reporting companies are required to report information about company applicants (see company creation timeline above). Additionally, if a minor child is a beneficial owner, the reporting company must identify the parent or legal guardian of a minor child in place of the minor child.

FinCEN Identifiers

If an individual has obtained a FinCEN identifier and provided it to a reporting company, the reporting company may include such FinCEN identifier in its report instead of the information required about the individual.

A “**FinCEN identifier**” is a unique identifying number that FinCEN will issue to an individual or reporting company upon request after the individual or reporting company provides certain information to FinCEN.

- An individual or reporting company is not required to obtain a FinCEN identifier.

- An individual or reporting company may only receive one FinCEN identifier.
- A company may use FinCEN identifiers in its BOI report instead of certain required information about beneficial owners or company applicants.

FinCEN Identifiers for Individuals

Individuals may electronically apply for FinCEN identifiers. In the application, an individual must provide their name, date of birth, address, unique identifying number and issuing jurisdiction from an acceptable identification document, and an image of the identification document – the same four pieces of personal information and image reporting companies submit about beneficial owners and company applicants in BOI reports. After an individual submits an application, the individual will immediately receive a FinCEN identifier unique to that individual.

Once a beneficial owner or company applicant has obtained a FinCEN identifier, reporting companies may report it in place of the otherwise required four pieces of personal information about the individual in BOI reports.

FinCEN Identifiers for Reporting Companies

A company may request a FinCEN identifier when it submits a BOI report by checking a box on the reporting form.

Updates or Corrections

When the information an individual or reporting company reported to FinCEN to obtain a FinCEN identifier changes, or when the individual or reporting company discovers that reported information is inaccurate, the individual or reporting company must update or correct the reported information, as applicable.