

CORPORATE TRANSPARENCY ACT

Overview of Filing Requirements

(Updated as of January 1, 2024)

Background

- The Corporate Transparency Act of 2019 (“CTA”) became effective on January 1, 2024. Under the CTA, all “reporting companies” must file a Beneficial Ownership Information (BOI) report with the Financial Crimes Enforcement Network (“FinCEN”) and comply with the reporting requirements of the CTA. Noncompliance may result in civil penalties, fines and criminal sanctions.

Overview

- The following is a general summary description of certain aspects of the CTA. This summary is not definitive or comprehensive, and is qualified in its entirety by reference to the CTA and the regulations, guidance, and interpretations promulgated or published with respect thereto.

Reporting Companies

- The CTA defines reporting companies as corporations, limited liability companies, limited partnerships and other similar entities created by filing a formation document with an individual state.

Entities Exempt from Reporting Requirements

- The CTA exempts 23 types of entities from the definition of “reporting companies.” Generally, these exempt entities fall into 3 categories:
 1. Entities that are regulated by government authorities, such as the Securities and Exchange Commission, and already disclose information regarding beneficial ownership to a government or regulatory body;
 2. Large operating companies, generally meaning privately held entities that have (i) at least 20 full-time U.S. employees, (ii) over \$5 million in annual gross receipts or sales, and (iii) an operating physical presence in the U.S.; and
 3. Certain tax exempt entities.

When and How to File

1. Due Date of Initial BOI Report:
 - a. Reporting Companies Formed Between January 1, 2024 and December 31, 2024. Reporting Companies formed between January 1, 2024 and December 31, 2024, must file their initial Beneficial Ownership Information (BOI) Report with FinCEN within 90 days after formation.
 - b. Reporting Companies Formed On or After January 1, 2025. Reporting Companies formed on or after January 1, 2025 must file their initial Beneficial Ownership Information (BOI) Report with FinCEN within 30 days after formation.

- c. Reporting Companies Formed Prior to January 1, 2024. Reporting Companies formed prior to January 1, 2024 must file their initial Beneficial Ownership Information (BOI) Report with FinCEN prior to January 1, 2025.
2. How to File: If you are required to report your company's beneficial ownership information to FinCEN, you will do so electronically by accessing the BOI E-Filing portal at <https://boiefiling.fincen.gov>. The E-Filing portal permits a reporting company to either (a) fill out a web-based version of the report and submit it online, or (b) complete a PDF version of the report which will need to be uploaded to the BOI E-Filing portal. Both methods require the filing to be done online and reports cannot be mailed or faxed to FinCEN.
3. Who can File: Anyone who the Reporting Company authorizes to act on its behalf—such as an employee, owner, or third-party service provider—may file a BOI report on the Reporting Company's behalf. When submitting the BOI report, individual filers should be prepared to provide basic contact information about themselves, including their name and email address or phone number.

What Information must be Reported

1. Information About the Reporting Company. The Reporting Company will need to report (i) its full legal name, (ii) its Tax ID number (FEIN), (iii) its jurisdiction of formation, (iii) its address (principal place of business), and (iv) whether the reporting company desires to obtain a FinCEN Identifier Number (discussed below).
2. Information about Beneficial Owners. The Reporting Company will need to report and provide information for each "Beneficial Owner." Beneficial Owners generally consist of:
 - a. Each individual who, directly and indirectly through intermediary entities, owns or controls at least 25% of the ownership (equity on a fully diluted basis) of the Reporting Company; and
 - b. Each individual who, directly or indirectly, exercises substantial control over the Reporting Company. Substantial control generally means an individual (i) having authority, directly or indirectly, over the appointment or removal of any senior officer or a majority or dominant minority of the board of directors (or similar body) of the Reporting Company, (ii) having any (direct or indirect) direction, determination, or decision power over, or substantial influence over, important matters affecting the Reporting Company, including but not limited to: (A) the nature, scope, and attributes of the business of the Reporting Company, including the sale, lease, mortgage, or other transfer of any principal assets of the Reporting Company; (B) the reorganization, dissolution, or merger of the Reporting Company; (C) major expenditures or investments, issuances of any equity, incurrence of any significant debt, or approval of the operating budget of the Reporting Company; (D) the selection or termination of business lines or ventures, or geographic focus, of the Reporting Company; (E) compensation schemes and incentive programs for senior officers of the Reporting Company; (F) the entry into or termination, or the fulfillment or non-fulfillment of significant contracts of the Reporting Company; (G) amendments of any substantial governance documents of the Reporting Company, including the certificate of organization or similar formation documents, this Agreement, and significant policies or procedures of the Reporting Company; and (H) any other form of direct or indirect substantial control over the Reporting Company.

Company Applicants

- Each Reporting Company formed on or after January 1, 2024 also must report its "Company Applicants." Company Applicants are the individuals (up to 2 individuals) who directly filed (physically or electronically) the document that created the company and the individual who was primarily responsible for directing or controlling such filing. Unlike Reporting Companies formed on or after January 1, 2024, Reporting Companies formed prior to January 1, 2024 do not need to report their "Company Applicants."

Information Required for each Beneficial Owner

- For each Beneficial Owner, the Reporting Company will need to report such individual's:
 - a. Legal name;
 - b. Date of Birth;
 - c. Residential Street Address;
 - d. State Driver's License # or Passport #.
- An image of the state driver's license or passport (which includes the photograph of the Beneficial Owner) will need to be uploaded with the report.

FinCEN Identifiers

- Individuals who are Beneficial Owners or Company Applicants may electronically apply for a unique 12-digit identifying number that FinCEN will issue upon request. Once a FinCEN identifier is issued to an individual, Reporting Companies may report such individual's FinCEN identifier in place of the otherwise required personal information about the individual.

To obtain a FinCEN Identifier, an individual will need to provide to FinCEN the following information:

- a. Legal name;
 - b. Date of Birth;
 - c. Residential Street Address;
 - d. State Driver's License # or Passport #.
- An image of the state driver's license or passport (which includes the photograph of the applicant) will need to be uploaded with the FinCEN Identifier application.
- To request a FinCEN identifier, individuals will need to obtain a login.gov account and sign in through login.gov. The login.gov website includes guidance about how to create an account <https://www.login.gov/create-an-account/>.

Updates

- If there are changes to the information reported by a Reporting Company after filing its Beneficial Ownership Report, the Reporting Company must file an updated report within 30 days after the date the change occurs. Similarly, if an individual obtains a FinCEN Identifier and the information provided on the application changes, such individual must update that individual's FinCEN Identifier application within 30 days after such change.

Penalties

- It is unlawful to willfully provide false or fraudulent beneficial ownership information or documentation or to willfully fail to report complete or updated beneficial ownership information. A person that violates the requirements of the CTA may be liable for civil penalties of not more than \$500 for each day that a violation continues and may be fined not more than \$10,000 and imprisoned for not more than 2 years, or both.

Client Actions

- Clients should familiarize themselves with the specific and detailed reporting requirements under the Corporate Transparency Act as applicable to entities that they own, control, or operate and familiarize themselves with the CTA's requirements. These requirements can be complex and difficult to navigate.
- For additional information, please visit:
- **Small Entity Compliance Guide**
https://www.fincen.gov/sites/default/files/shared/BOI_Small_Compliance_Guide.v1.1-FINAL.pdf
- **An Introduction to Beneficial Ownership Information Reporting**
<https://www.fincen.gov/sites/default/files/shared/BOI%20Informational%20Brochure%20508C.pdf>
- **Beneficial Ownership Information Report Filing Instructions**
<https://boiefiling.fincen.gov/help>
- **FinCEN Identifier Application Filing Instructions**
<https://fincenid.fincen.gov/assets/helpContent/FinCEN-ID-Instructions-20240101.pdf>

If you need assistance or further guidance regarding compliance with the CTA or have related questions, please reach out to your Neal Gerber Eisenberg attorney.

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