

# **THE CORPORATE TRANSPARENCY ACT**

## **Beneficial Ownership Information Reporting Requirements**

### 1. Background

a. The Corporate Transparency Act (CTA) enacted in 2021 – 31 U.S.C. §5336

b. Effective January 1, 2024

c. Requires report of legal “entities”

1. BOI report must provide the entity’s:

A. Beneficial owners

B. Applicant – 31 C.F.R. § 1010.380

2. Report to be filed with FinCEN online

d. Civil and criminal penalties for failure to report

e. Separate requirement from tax return filing

f. Ostensibly passed to combat money laundering, tax fraud, drug traffickers, oligarchs, and to quell the funneling of financial aid to terrorists

### 2. Companies required to report

a. A “reporting company” is required to report BOI data

b. Two types of “reporting companies”

1. A domestic reporting company

A. Corporation, LLC or other entity

B. Created by filing with a secretary of state

2. A foreign reporting company

- A. Corporation, LLC, or any other entity
- B. Formed under the law of a foreign country
- C. Registered to do business in any state or tribal jurisdiction
- D. By filing with a secretary of state

c. Includes limited liability partnerships, business trusts, and most limited partnerships

d. The key element of a “reporting company”

1. Was an organizational document filed with a secretary of state or similar office?

e. Exclusions

1. Sole proprietorships

2. Most trusts

3. Qualified joint venture enterprises

3. Entities exempt from reporting

a. Twenty-three types of entities are exempt – See: *Small Entity Compliance Guide*; 31 C.F.R. §1010.380(c)(2)

[https://www.fincen.gov/sites/default/files/shared/BOI\\_Small\\_Compliance\\_Guide.v1.1-FINAL.pdf](https://www.fincen.gov/sites/default/files/shared/BOI_Small_Compliance_Guide.v1.1-FINAL.pdf) ]]

b. Exempt entities generally report elsewhere

4. Information that must be reported

a. “Beneficial owner” of the company – individuals who, directly or indirectly

1. Exercise substantial control over the company, **or**

2. Own or control at least 25% of the ownership interests

b. “Substantial control” exists if the person:

1. Is a senior officer,

2. Has authority to appoint or remove certain officers or a majority of the directors,

3. Is an important decisionmaker, or

4. Has any other form of substantial control over the company

c. An “ownership interest” exists if one owns or controls at least 25% of the company

1. Equity, stock or other voting rights

2. A capital or profits interest

3. Convertible instruments, options or other non-binding privileges to buy or sell any of the above, and

4. Any other instrument, contract, or other means used to establish ownership

5. Exceptions to BOI reporting – 31 C.F.R. §1010.380(d)(3)(i)-(v)

a. A minor child, as defined under the law of the State or Indian tribe in which a domestic company is created or a foreign company is first registered, provided the company reports the required information of a parent or legal guardian of the minor child;

b. An individual acting as a nominee, intermediary, custodian, or agent on behalf of another individual;

c. An employee of a reporting company, 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, provided that such person is not a senior officer of the company;

d. An individual whose only interest in a reporting company is a future interest through a right of inheritance; and

e. A creditor of a reporting company.

6. Who is the “company applicant”?

a. A “company applicant” is one of three persons – 31 C.F.R. §1010.380(e)

1. Domestic company: the individual who directly files the document with the Secretary of State that creates the entity;

2. Foreign company: the person who files the document that first registers the entity to do business in the United States; and

3. For either type of company, the individual who is “primarily responsible for directing or controlling such filing,” if more than one person is involved in the filing.

b. Companies existing or registered *as of* January 1, 2024, do NOT need to identify/report company applicants – *Small Entity Compliance Guide*, pg 33.

c. Company applicants must be reported for companies formed or *on or after* January 1, 2024

7. Filing BOI reports

a. BOI report filed with FinCEN – 31 C.F.R. §1010.380(b)

b. Tax return filing/disclosure does not constitute compliance

8. Effective date

a. January 1, 2024 – 31 C.F.R. §1010.380(a)(1)

b. Companies created or registered *before* January 1, 2024

1. Report due January 1, 2025

c. Companies created or registered *on or after* January 1, 2024, and *before* January 1, 2025

1. Report due within 90 days

d. Companies created or registered *on or after* January 1, 2025

1. Report due within 30 days

e. The 90- and 30-day periods begin after receiving notice of creation or registration from the Secretary of State

f. Correcting/amending previous reports

1. 30 days to report changes

2. 30 days of becoming aware of, or have reason to know, prior report is inaccurate – 31 C.F.R. §1010.380(b)(3)

## 9. How to file a BOI Report

a. Filed electronically through FinCEN online

[www.fincen.gov/boi](http://www.fincen.gov/boi).

## 10. Penalties – 31 U.S.C. § 5336(h)(1), (3)

a. Unlawful to willfully provide a false or fraudulent BOI report

b. Unlawful to willfully fail to file any required report

c. Civil and criminal penalties

1. Civil fine of up to \$500 per day *for each day* the failure continues

2. Criminal penalty of up to \$10,000, or imprisonment of up to 2 years, *or both*