

Corporate Transparency Act: Frequently Asked Questions

The Corporate Transparency Act (the “CTA”) is a federal law that requires certain “**reporting companies**” to file a beneficial ownership information (“**BOI**”) report containing personal information about their “**beneficial owner(s)**” and “**applicants**” to the Department of Treasury’s Financial Crimes Enforcement Network (“**FinCEN**”). This is a significant change that will affect many businesses in the U.S., making compliance with the law important. Below is a list of Frequently Asked Questions about the new law that will help you determine whether your business is subject to these reporting requirements.

When will the Corporate Transparency Act take effect?

The CTA went into effect January 1, 2024, and BOI reports are due depending on when a reporting company is created/registered.

Who does the CTA affect?

All reporting companies, which includes corporations, limited liability companies, and similar entities; provided that no exemption applies.

Where can Beneficial Ownership Information reports be submitted?

BOI reports must be submitted online to FinCEN at www.fincen.gov/boi and will be stored on a restricted database accessible to certain authorized government agencies and, in limited instances, certain private financial institutions.

Why is the CTA being enforced?

The CTA is an effort by the federal government to combat attempts by bad actors to conceal their ownership of corporations, limited liability companies, etc. to facilitate illicit activity (like money laundering, financing terror, tax fraud, human and drug trafficking, counterfeiting, securities and financial fraud, and corruption).

What is the result of not complying with the CTA?

Failure to comply with the CTA may incur a penalty of \$500 for **each day** a BOI report is not filed (up to \$10,000) and potentially up to two years imprisonment.

Who is defined as a "Reporting Company"?

The CTA defines a “reporting company” as a corporation, limited liability company, or other similar entity that is (i) created by filing a document with a secretary of state or similar office under the laws of a state or Indian Tribe, or (ii) formed under the laws of a foreign country and registered to do business in the United States by filing a document with a secretary of state or similar office under the laws of a state or Indian Tribe.

Are there exemptions to the reporting rules?

Yes, there are 23 exemptions to the definition of a reporting company:

- **(i) An issuer of securities** (i) registered under Section 12 of the Securities Exchange Act or (ii) required to file supplementary and periodic information under Section 15(d) of the Securities Exchange Act.
- **(ii) An entity that exercises governmental authority** on behalf of the United States or any Indian Tribe, state, or political subdivision,
- **(iii) A bank** as defined in Section 3 of the Federal Deposit Insurance Act, the Investment Company Act, or the Investment Advisers Act.
- **(iv) A credit union** as defined in Section 101 of the Federal Credit Unions Act.
- **(v) A bank holding company** as defined in Section 2 of the Bank Holding Company Act.
- **(vi) A money transmitting business** registered with the Secretary of the Treasury.
- **(vii) A broker or dealer** as defined in Section 3 of the Securities Exchange Act and registered under Section 15.
- **(viii) An exchange or clearing agency** as defined in Section 3 of the Securities Exchange Act and registered under Section 6 or 17A.
- **(ix) An entity registered with the SEC** under the Securities Exchange Act.
- **(x) An investment company** (as defined in Section 3 of the Investment Company Act) **or investment adviser** (as defined in Section 202 of the Investment Advisers Act) registered with the SEC under the respective applicable act.
- **(xi) An investment adviser** as defined in Section 203(1) of the Investment Advisers Act that has filed Item 10, Schedule A and Schedule B of Part IA of Form ADV with the SEC.
- **(xii) An insurance company** as described in Section 203(i) of the Investment Advisers Act.
- **(xiii) An insurance producer** authorized by a state and subject to supervision by the insurance commissioner of said state.
- **(xiv) An entity registered under the Commodity Exchange Act** (under Section 1a) **or futures commission merchant** (as defined in Section 1a of the Commodity Exchange Act) **or a retail foreign exchange dealer** (as defined in Section 2(c)(2)(B) of the Commodity Exchange Act) and registered with the Commodity Futures Trading Commission.
- **(xv) A public accounting firm** registered under Section 102 of the Sarbanes-Oxley Act.
- **(xvi) A public utility** providing telecommunications, electrical, natural gas, or water and sewer services.
- **(xvii) A financial market utility** designated by the Financial Stability Oversight Counsel.

- **(xviii) A pooled investment vehicle** operated or advised by a person described in items (iii), (iv), (vii), (x), or (xi).
- **(xix) A tax-exempt organization** recognized as tax-exempt or described under Section 501(a) (charitable, etc.), Section 527(a) (political organizations), or Section 4947 (trusts) of the Internal Revenue Code.
- **(xx) An entity that assists tax-exempt organizations**, is beneficially owned or controlled exclusively by United States citizens or permanent residents and derives a majority of its funding or revenue from one or more United States citizens or permanent residents.
- **(xxi) An entity with 20 or more full-time employees, an operating presence at a physical office, and income more than \$5M** (in gross receipts or sales in the aggregate).
- **(xxii) An entity owned or controlled (subsidiaries) by a person** described in (i)-(v), (vii)-(viii), (ix)-(xvii), (xix), or (xxi).
- **(xxiii) An entity existing for over one (1) year not engaged in active business** and not owned by a foreign person, not experienced a change in ownership or received funds in amount greater than \$1,000 in the preceding 12 months, and not holding any assets, including ownership interest in another entity.

Who is required to be included in the BOI reports?

Reporting companies are required to file BOI reports containing personal information of the following person(s):

Beneficial Owner: A reporting company's beneficial owner is an individual who directly or indirectly (i) exercises substantial control over the reporting company, or (2) owns or controls at least 25% of the ownership interest.

However, the following are **NOT** beneficial owners of a reporting company:

1. A **minor child**, *provided* that the information of the parents or guardian is reported.
2. An **individual acting** as a nominee, intermediary, custodian, or agent on behalf of another individual.
3. An **individual acting solely as an employee** and whose control or economic benefit is derived solely from their employment status.
4. An **individual whose only interest is through right of inheritance**.
5. A **creditor**, unless the creditor also (i) exercises substantial control over the reporting company, or (2) owns or controls at least 25% of the ownership interest.

Applicant: A reporting company's "applicant" is an individual who registers, files an application to register or files an application to form an entity under the laws of a state or Indian Tribe.

When will reporting companies be required to file a BOI?

Beginning January 1, 2024, reporting companies will be required to file a BOI report with FinCEN. Due dates for BOI reports depend on the reporting company's date of formation/registration.

Created before Jan. 1, 2024: Until January 1, 2025, to file BOI report.

Created on or after Jan. 1, 2024, but before Jan. 1, 2025: Ninety calendar days from date of formation/registration to file BOI report.

Created on or after Jan. 1, 2025: Thirty calendar days from date of formation/registration to file BOI report.

What information is required to be included in a BOI Report?

For each individual who is a beneficial owner, a reporting company will have to provide:

- The individual's name;
- Date of birth;
- Residential address; and
- An identifying number from an acceptable identification document such as a passport or U.S. driver's license, and the name of the issuing state or jurisdiction of identification document.

How long do you have to update and/or amend your BOI report?

In the event of a change to the information included in a BOI report, reporting companies have 30 days to submit an updated BOI report to FinCEN.

Do we need to disclose personal information about exempt entities?

Entities exempt under § 5336(a)(11)(B) [*read*: excluded from the definition of a "reporting company"] must be named if they have a controlling interest in a reporting company, *however*, no personal information needs to be disclosed.

What happens if exempt status is lost?

If an entity no longer meets the criteria of exemption under § 5336(a)(11)(B), the entity must submit a BOI report at the time the criteria is no longer met.

How long does FinCEN retain records, and who will have access?

FinCEN will keep records of BOI for at least five years. BOI records may be requested by:

- A federal agency engaged in national security, intelligence, or law enforcement activity for use in furtherance of that activity or on behalf of a foreign central authority under an international treaty, agreement, convention, or official request.
- A state, local or Tribal law enforcement agency, provided a court of competent jurisdiction has authorized the agency.
- A financial institution subject to customer due diligence requirements with consent from the reporting company.
- A federal functional regulatory or other regulatory agency.
- Officers or employees of the Department of Treasury whose official duties require such inspection or disclosure or for tax administration purposes.

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