

You keep hearing about the “Corporate Transparency Act,” and you are wondering – “how does this affect my business?”

A. What is it?

Before getting into the details of the Corporate Transparency Act (the “CTA”), it is important to understand its scope and purpose.

On January 1, 2021, Congress (in a rare bipartisan move) passed the CTA as part of the Anti-Money Laundering Act of 2020 in an effort to more forcefully tackle the global issue of money laundering and corruption.

The CTA’s stated goal is to provide national security and law enforcement agencies greater ability “to counter money laundering, the financing of terrorism, and other illicit activity.” The CTA is zeroed in on small, unregulated businesses, particularly those entities considered “shell companies,” where ownership can be hidden and funds aiding illicit activity can pass through easily without detection.

With this purpose in mind, the CTA authorizes the Financial Crimes Enforcement Network (“FinCEN”) of the Department of Treasury to combat shell companies and opaque ventures through its collection of what it calls “beneficial ownership information” or “BOI” by requiring submittal of BOI reports to FinCEN. While it would seem that this should not apply to most business ventures - to the contrary, its impact will apply to most for-profit companies.

B. What is required?

FinCEN mandates corporations, limited liability companies (LLCs), limited liability partnerships (LLPs), limited partnerships (LPs), business trusts, and any other entity created through filing with a secretary of state or similar state or tribal office operating within the United States, to submit a BOI report directly through FinCEN’s website. As with most rules, there are specific exemptions (in this case, 23 at present). Because FinCEN is focusing on smaller companies, the exemption from BOI reporting that is likely to capture many entities constitutes what FinCEN has designated a “Large Operating Company”; that is, a company

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- that employs more than 20 full-time employees (generally, 30 hours per week) in the United States; and
- that has an office or physical location in the United States from which it regularly conducts business; and
- which, in its U.S. federal income tax returns filed for the previous tax year, demonstrated more than \$5 million in gross receipts or sales in the aggregate, excluding gross receipts or sales from sources outside the United States.

Any company that is not exempt is designated as a “Reporting Company” and is required to submit a BOI report.

A Reporting Company will need to report the entity’s full legal name (and any alternative trade or d/b/a names), the street address of the principal place of business or primary location in the United States, the jurisdiction of the entity’s formation or registration, and its taxpayer identification number (*e.g.*, Employer Identification number (EIN), or Legal Entity Identification number (LEI number)).

The Reporting Company will also be required to report its Beneficial Owners and Company Applicants. Simply put, a Beneficial Owner is an individual who either exercises substantial control over the Reporting Company or owns or controls at least 25% of the ownership interests in the Reporting Company. The Reporting Company will be required to report each Beneficial Owner’s full legal name, date of birth, current residential or business street address, and a unique identifying number from an acceptable

identification document (such as a State-issued license or ID, or passport) along with an image of that document. A Company Applicant is an individual who directly files an entity's formation documents with a relevant state or tribal authority or is primarily responsible for directing or controlling the filing. Attorneys and other service providers involved in forming new entities after January 1, 2024, are likely to be deemed Company Applicants.

Importantly, any change to the information previously reported concerning a Reporting Company or its Beneficial Owners must be reported to FinCEN within 30 days of the date of the change. In short, this is **NOT** file it and forget it. Companies will need to be mindful of the reporting requirement as owners come and go, in the event of transactions, and even as addresses change.

C. When do I need to submit a BOI report?

Reporting Companies created **before January 1, 2024** have until **December 31, 2024** to submit BOI reports but will not be required to report information about their Company Applicants.

Reporting Companies created **on or after January 1, 2024** are required to submit complete BOI reports within **ninety (90) days** after receiving notice of an effective formation or registration.

Reporting Companies created **on or after January 1, 2025** are required to submit complete BOI reports within **thirty (30) days** after receiving notice of an effective formation or registration.

A Reporting Company must file an updated BOI report whenever there is a change in its basic information, Beneficial Owners, or status as a Reporting Company. The updated report must be filed no later than **thirty (30) days** after the change.

D. What happens if I don't comply?

Compliance with the CTA is extremely important as there can be significant penalties involved for non-compliance, including fees and jail time.

A willful failure to comply with the CTA may result in civil or criminal penalties, including civil penalties of up to \$500 for each day that the violation continues, or criminal penalties, including imprisonment of up to two years and/or a fine of up to \$10,000.

Furthermore, a person may be subject to civil and/or criminal penalties for willfully causing a Reporting Company not to submit a BOI report or to somehow provide incomplete or false information.

E. What happens to the information submitted?

Pursuant to a Department of Treasury Rule* issued on December 21, 2023, the information submitted in a BOI report will be retained in a secure registry and only be accessible to federal, state, and local law enforcement agencies, and certain financial institutions and foreign governments. Most seeking such information will be required to submit formal requests and comply with other restrictions; some will be required to obtain court orders.

F. Additional Resources

FinCEN's website: <http://fincen.gov>

FinCEN's Small Entity Compliance Guide:

https://www.fincen.gov/sites/default/files/shared/BOI_Small_Compliance_Guide.v1.1-FINAL.pdf

FinCEN's Frequently Asked Questions: <https://www.fincen.gov/boi-faqs>

*FinCEN Fact Sheet for Rule reference: <https://www.fincen.gov/news/news-releases/fact-sheet-beneficial-ownership-information-access-and-safeguards-final-rule>

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