

Corporate Transparency Act

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Corporate Transparency Act

- Background
- Reporting Companies
- Beneficial Owners
- Information Disclosure
- Reporting and Compliance

CTA | Background



Corporate Transparency Act

Background

- The lack of US beneficial ownership information (BOI) reporting requirements made the United States the jurisdiction of choice to establish shell companies to hide ultimate beneficial owners
- BOI reporting to counter money laundering, terrorist financing, corruption, tax fraud and other illicit activity to protect national security, intelligence and law enforcement interests

Corporate Transparency Act

Background

- United States now will require certain legal entities to report to the federal government identifying information about the individuals who directly or indirectly own or control a company within the scope of the new legislation. This information will be housed in a centralized, secure nonpublic federal government database to be administered by the Financial Crimes Enforcement Network (FinCEN), a bureau of the U.S. Department of the Treasury.

Corporate Transparency Act

Background

- Requires certain entities, including corporations, LLCs and other similar entities to report identifying information about the individuals who directly or indirectly own or control a company within the scope of the legislation unless the entity is out of scope or an exception applies.

Initial Report Information

Reporting Company created or registered before January 1, 2024

- – Provide information about:
- Itself
- Beneficial owners
- But not Company Applicants

Reporting Company created or registered after January 1, 2024

- – Provide information about:
- Itself
- Beneficial Owners
- Company Applicants



CTA | Reporting Company



Reporting Company

Domestic or Foreign

- Domestic. Created by the filing of a document with a secretary of state or a similar office under the law of a state or Indian Tribe
- Foreign. Formed under the law of a foreign country and registered to do business in any state or Indian Tribe by the filing of a document with a secretary of state or a similar office under the laws of a state or Indian Tribe
- Any state of the US | the District of Columbia | the Commonwealth of Puerto Rico | the Commonwealth of the Northern Mariana Islands | American Samoa, Guam, the U.S. Virgin Island | any other commonwealth, territory, or possession of the US

Reporting Company

Exceptions (Out of Scope)

- Sole proprietorship (not an entity)
- General partnership
- Unincorporated association
- Wealth planning trust (but not a statutory trust, such as a DL statutory trust)
- Because no document filed with a secretary of state/Indian Tribe
- Foreign entity not registered to do business in a state or with an Indian Tribe

Reporting Company

Specific Exemptions

- Publicly traded companies SEC registered
- Governmental Authorities
- Banks
- Credit unions
- Depository institution holding companies
- Money services businesses
- Brokers /dealers in securities
- Securities exchange or clearing agencies
- Other Exchange Act registered entities
- Investment companies/investment advisors
- Venture capital fund advisors
- Insurance companies
- State-licensed insurance producers
- Commodity Exchange Act registered entities
- Accounting firms registered with Sarbanes-Oxley Act
- Public utilities
- Financial market utilities
- Pooled investment vehicles
- Tax-exempt entities
- Entities assisting tax-exempt entities
- Large operating companies in US | > 20 full-time employees | > \$5M gross receipts reported to IRS in prior year | physical US office
- Subsidiaries of certain exempt entities
- Inactive entities

CTA | Beneficial Owner



Beneficial Owner

Definition

- Any individual who, directly or indirectly, through contract, arrangement, understanding, relationship or any other agreement:
- Exercises substantial control over a reporting company, OR
- Owns or controls at least 25 percent of the ownership interests of the reporting company

Beneficial Owner

Substantial Control - Indicators

- Legal Authority. Senior officer (nominal or de jure authority)
 - Senior officer includes a president, CEO, COO, CFO, GC or any other officer, regardless of official title, who performs a similar function
- Appointment/Removal Authority.
 - Authority over appointment/removal of a senior officer or majority of board of directors (or similar body) (de facto authority)
- Substantial Influence over Decisions.
 - Directs/determines or substantial influence over important decisions made by the Reporting Company (business/finance/structure) (de facto authority)
- Any Other Form of Control.
 - Any other form of substantial control over Reporting Company (i.e., “catch all” provision)

Beneficial Owner

Substantial Control – Direct or Indirect

- Board representation
- Ownership/control of a majority of voting power/voting rights of a Reporting Company
- Rights associated with any financing arrangement or interest in a Reporting Company
- Rights/control of one or more intermediary entities that separately/collectively exercise substantial control over a Reporting Company
- Arrangements/financial/business relationships with other individuals/entities acting as nominees
- Any other contract arrangement, understanding, relationship or otherwise

Beneficial Owner

Substantial Control – FINCEN Expectations

- Substantial control does not require ownership
- Expects: A Reporting Company to identify at least one Beneficial Owner under Substantial Control test
- Requires: All persons in Substantial Control must be reported

Beneficial Owner

25 Percent Ownership Test

- Ownership Interest. Broadly defined to include:
 - Equity, stock, or similar instrument (irrespective of whether interest is transferable | classified as stock or anything similar | or confers voting powers or rights)
 - Capital interest in an entity
 - Convertible instruments
 - Options (except those created by third party w/o knowledge of Reporting Company)
 - “Catch all”: any other instrument, contract, arrangement, understanding, relationship or mechanism used to establish ownership

Beneficial Owner

25 Percent Ownership Test

- Ownership or Control of Ownership Interest. Individual may directly or indirectly own or control an ownership interest in a Reporting Company through any contract, arrangement, understanding, relationship, or otherwise, including:
 - Joint ownership
 - Through another acting as nominee | intermediary | custodian | agent of an individual
 - Through a trust or similar arrangement that holds such ownership interest
- **Ownership interest does not include ownership through constructive ownership or attribution**

Beneficial Owner

25 Percent Ownership Test Calculation

- Calculation to determine whether individual owns or controls 25% of Ownership Interests in Reporting Company.
 - Individual's total ownership interests determined at present time, treating options and similar interests as exercised, and calculated as a percentage of total outstanding ownership interests in the Reporting Company.
 - Reporting Companies that issue capital and profits interests (including entities taxed as a partnership) and calculated as a % of the total outstanding capital and profits interests in the entity
 - Corporations that issue shares of stock, individual's % is equal to vote/value to total outstanding vote/value of all classes entitled to vote, or of ownership interests
 - "Catch-all rule." If above calculations cannot be performed with certainty, an individual is deemed to hold 25 percent or more of total ownership interests provided individual owns or controls 25% or more of any class of ownership interests

Beneficial Owner

25 Percent Ownership Test Calculation

- Joint Interests. If several individuals own a 25% interest in a Reporting Company, the 25 percent interest is attributed to each joint owner as if that person owned that interest
- Intermediate Entities. Ownership or control of a Reporting Company's interest through one or more intermediate entities attributed to the owners of the intermediate entity(s), irrespective of whether the intermediaries own the interests separately or collectively
- Overall determination based on facts and circumstances including both direct and indirect interest

Beneficial Owner

Exclusions

- Minor children (provided Reporting Company reports required information of a parent/guardian)
- Nominees, intermediaries, custodians, or agents (in these relationships, reporting of principal required)
- Employee of a Reporting Company, acting solely as an employee, provided individual is not a Senior Officer and substantial control/economic benefits from Reporting Company derived solely from employment status
- Inheritor – an individual whose only interest in a Reporting Company is a future interest through a right of inheritance
- Creditor of Reporting Company who only has a right to be paid a predetermined sum of money who meet the definition of a beneficial owner solely through a loan covenant (or similar right) intended to secure their right to receive repayment

CTA | Information Disclosure



Company Applicant

Definitions

- For a Domestic Reporting Company, the individual who directly files the document that creates the Reporting Company
- For a Foreign Reporting Company, the individual who directly files the document that first registers the Reporting Company
- Whether for a domestic or a foreign Reporting Company, the individual who is primarily responsible for directing or controlling the filing of the document if more than one individual is involved in the filing of the document
- Revised definition in Final Regulations designed to identify the individual responsible for the creation of a Reporting Company through the filing of formation documents, and the individual that directly submits the formation documents, if that function is performed by a different person

Information Disclosure

Reporting Company

- Complete Legal Name
- Tradename or DBA
- Business address
- State/Tribal jurisdiction of formation
- Jurisdiction of Registration
- IRS TIN (including EIN)
 - Where foreign reporting company does not have a TIN, use the tax ID issued by a foreign jurisdiction and provide name of foreign jurisdiction

Personally Identifiable Information

- Full legal name
- Date of Birth
- Current Residential Address*
- Unique ID number and issuing jurisdiction from acceptable ID document (e.g., non- expired (i) passport, (ii) state or local ID document, (iii) driver's license)
- – If individual has none of the foregoing, a non- expired foreign passport
- Image of document from which the unique ID number was obtained
- * If Company Applicant is in business of corporate formation (e.g., an attorney), then use business address rather than residential address

Initial Report Deadlines

Preexisting Reporting Companies (formed or registered prior to January 1, 2024) no later than January 1, 2025

Newly Created | Registered Reporting Company (formed on or after January 24, 2024) must file within 30 days of the earlier of :

- Date on which Reporting Company received actual notice that its creation/registration became effective or
- Date on which a secretary of state or similar office first provides public notice, such as through a publicly accessible registry, that Reporting Company has been created (domestic) or registered (foreign)

Updated Reports

Within 30 days of a change in the required information previously submitted to FinCEN relating to Reporting Company or its Beneficial Owners

Company Applicant changes do not require Updated Report, assuming information reported was correct, but a Corrected Report required if information was not correct

But a FinCEN Identifier requires that individual file Updated FinCEN Application

Updated Report required only where Reporting Company information or individual's PII previously submitted to FinCEN changes

Same rule applies to changes in ID document (four pieces of individual information)

Updated Report not required upon expiration date or change in personal characteristics

Corrected Reports

Errors in Reports filed remedied by filing a corrected report within 30 days of becoming aware, or having a reason to know of, inaccuracies in an earlier Report

Unclear whose knowledge triggers 30 day start period

Safe Harbor for Liability from penalties.
A corrected report filed within the 30-day period is deemed to satisfy the safe harbor rule if filed within 90 calendar days after date on which the inaccurate report was filed

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Penalties

- Overview of Reporting Violations
 - Failure to Report
 - Failure to Update BOI
 - Failure to Correct Inaccurate BOI
- Rule. It shall be unlawful for any person to willfully provide, or attempt to provide, false or fraudulent beneficial ownership information, including a false or fraudulent identifying photograph or document, to FinCEN, in accordance with this section, or to willfully fail to report complete or updated beneficial ownership information to FinCEN in accordance with this section
- Penalties.
 - Civil Penalty. \$500 per day in civil monetary penalties
 - Criminal Penalty. \$10,000 fine, imprisonment of no more than 2 years, or both

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Penalties

- Safe Harbor (for liability from penalties).
- If a person acting in good faith corrects inaccurate information submitted to FinCEN within 30 after the date on which the person becomes aware or has reason to know of the inaccuracy
- A corrected report filed within the 30-day period will be deemed to satisfy the safe harbor only if the corrected report is filed within 90 calendar days after the date on which the inaccurate application was submitted

