



Corporate Transparency Act A summary of the new reporting requirements - by Sandy Klein

February 13, 2024 - Spotlights



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On January 1, 2024, the Corporate Transparency Act (CTA) went into effect. The CTA requires businesses, including real estate businesses, to file a Beneficial Ownership Information (BOI) Reports with the US Department of Treasury's Financial Crimes Enforcement Network (FinCEN). Such reports identify (1) the beneficial owners of the entity and (2) the individuals who filed an application with a government authority to create the entity or register it to do business. The CTA is designed to prevent and combat money laundering, terrorism financing, corruption, tax fraud, and other illegal activities.

Each reporting company has to file an initial report. Business entities organized on or after January 1, 2024, have 30 days from registration to file the initial report. Business entities organized before January 1, 2024, have until January 1, 2025 to file the initial report. Based on the proposed regulations, 30 to 90 day extensions are available for the entities organized on or after January 1, 2024 and before January 1, 2025. Entities organized on or after January 1, 2025, would have 30 days to file their BOI reports with FinCEN.

Every corporation, LLC, or other entity created by the filing of a document with a Secretary of State or similar office under the law of a state or Indian tribe is required to file a BOI report unless it qualifies for an exemption.

There are 23 specific exemptions from the BOI reporting requirements, generally for companies that are already subject to strict regulatory reporting requirements, such as: publicly traded companies and other entities that file reports with the SEC, banks, credit unions, money services businesses, securities brokers and dealers, tax-exempt entities, insurance companies, state-licensed insurance producers, pooled investment vehicles, public utilities, and accounting firms. There are also exemptions for large operating companies and inactive entities. A large operating company is defined as a business with more than 20 full-time U.S. employees, a physical place of operations in the U.S., and more than \$5 million of U.S. sourced gross receipts reported on their prior year income tax return. An inactive entity is an entity in existence before 2020 that is not owned by a foreign person and has not had an ownership change in the preceding 12-month period. Furthermore, it cannot be engaged in active business, hold any assets, or send or receive any funds over \$1,000 in the preceding 12-month period.

The BOI report should include the following reporting company's information (1) full legal name, (2) "doing business as" names, (3) complete current street address of the principal place of business, (4) formation jurisdiction, and (5) Federal taxpayer identification number. A domestic reporting company created before January 1, 2024 has to provide information about the company and about its beneficial owners. A domestic reporting company created on or after January 1, 2024, has to provide information about the company, its beneficial owners, and its company applicants.

The initial report must include BOI for the reporting company's beneficial owners and certain company applicants. BOI includes an individual's full legal name, date of birth, street address, and a unique ID number. The unique ID number can be from a nonexpired U.S. passport, state driver's

license, or other photo-identification card issued by a state or local government. If the individual does not have any of those documents, then a non-expired foreign passport can be used.

A beneficial owner is any individual who, directly or indirectly, exercises substantial control over the reporting company or owns or controls at least 25% of the reporting company's ownership interests. An individual might be a beneficial owner through substantial control, ownership interests, or both. Individuals have substantial control if they make important decisions about the reporting company's business, finances, or structure. By default, a company's senior officers are automatically deemed to have substantial control. Senior officers include the president, chief financial officer, general counsel, chief executive officer, chief operating officer, and any other officer who performs a similar function, regardless of their official title.

Ownership interest, for the purpose of BOI reporting, is defined broadly and includes any of the following: equity, stock, or voting rights; a capital or profit interest; convertible instruments; and other instruments. An individual may have ownership in a reporting company through ownership in one or more intermediary entities that separately or collectively own an interest in a reporting company. Some exceptions are available to the definition of a beneficial owner.

The company applicant is the individual who directly files the document that organizes or registers the reporting company. If more than one individual participates in filing the document, the person primarily responsible for overseeing the filing is also considered a company applicant.

Business owners should familiarize themselves with the new filing requirements as it is mandatory for most businesses. A noncompliance with the BOI reporting can result in civil and criminal penalties for failing to provide information or providing false information. The fine for willfully failing to complete an initial or updated report or for willfully providing false or fraudulent information to a reporting company is \$500 per day, up to \$10,000 and imprisonment for up to two years.

The BOI report can be filed on the FinCEN website using the following link <https://boiefiling.fincen.gov/>

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