

New Federal Reporting Requirement for Beneficial Ownership Information

The Corporate Transparency Act (“CTA”) was enacted by Congress on January 1, 2021, as part of the National Defense Authorization Act. The CTA includes significant reforms to anti-money laundering laws and is intended to help prevent and combat money laundering, terrorist financing, corruption, and tax fraud. The CTA establishes a beneficial ownership reporting requirement for corporations, limited liability companies, and other similar entities formed or registered to do business in the United States. Beneficial ownership reports must be filed with the Financial Crimes Enforcement Network (FinCEN), a bureau within the U.S. Department of Treasury.

When does the CTA take effect?

The reporting requirements under the CTA come into effect on January 1, 2024. Business entities formed prior to such date will have until January 1, 2025, to comply with the CTA’s reporting requirements.

When is the initial beneficial ownership information (BOI) report required to be filed with FinCEN?

A domestic reporting company formed prior to January 1, 2024, and an entity that registered as a foreign reporting company prior to January 1, 2024, must file an initial report by January 1, 2025.

Any domestic reporting company formed in 2024, must file a BOI report within **90 calendar days** of either receiving actual notice that its formation has become effective or the secretary of state or similar office first providing public notice that it has been formed, whichever occurs first.

Any entity that becomes a foreign reporting company in 2024, must file a BOI report within **90 calendar days** of either receiving actual notice that it has been registered to do business or the Secretary of State or similar office first providing public notice that it has been registered, whichever occurs first.

Reporting companies formed or registered on or after January 1, 2025, will have **30 calendar days** to file their initial BOI reports after receiving actual or public notice that the entity has been formed or registered, whichever occurs first.

Who is required to report beneficial ownership information (“BOI”)?

Certain businesses, referred to by FinCEN as “reporting companies,” will be required to report beneficial ownership information to FinCEN. Reporting companies include domestic and foreign (formed outside the U.S.) businesses.

Domestic reporting companies are corporations, limited liability companies, and other entities that are formed by filing a document with a secretary of state or any similar office under the law of a state or Indian tribe.

Foreign reporting companies are corporations, limited liability companies, and other entities that are formed in a foreign country and are registered to do business in the United States or in any Tribal jurisdiction by submitting a document with the secretary of state or any similar office under the law of a U.S. state or Indian tribe.

A reporting company is required to file the BOI report unless an exemption applies.

Who is exempt from reporting requirements?

The CTA lists 23 categories of entities that are exempt from reporting. View the list of exemptions here: <https://www.fincen.gov/boi-faqs>

Many of the exempt categories are already subject to similar regulation such as banks, credit unions, tax-exempt entities, public utilities, and large operating companies.

Business entities that do not fall within the scope of the reporting requirements include sole proprietorships, some general partnerships, foreign entities not registered to do business in the U.S., unincorporated associations, and wealth planning trusts.

A “large operating company” is exempt from reporting requirements. What is considered a “large operating company”?

For an entity to qualify as a “large operating company”, the following criteria must be met:

- Employs more than 20 full-time employees in the United States.
- Has an operating presence at a physical address within the United States.
- Filed a Federal income tax or information return in the United States for the previous year demonstrating more than \$5M in gross receipts or sales. This excludes gross receipts or sales from sources outside the United States.

A tax-exempt entity is exempt from reporting with FinCEN, but what if the entity loses its tax-exemption or a new nonprofit entity does not receive the tax-exempt status from the IRS within 90 days of forming with the secretary of state or similar office?

Tax-exempt entities are also exempt from the CTA filing requirements. These entities include any organization that is described in section 501(c) of the Internal Revenue Code and exempt from tax under section 501(a).

A tax-exempt entity must closely monitor its tax-exempt status to avoid penalties for failure to report a change in status. If a tax-exempt entity loses its tax-exempt status, then the entity must report beneficial ownership information to FinCEN within 180 days.

As a new entity, formed in 2024, must report with FinCEN within 90 days of forming or registering to do business in the United States, a nonprofit entity may need to submit the initial report to FinCEN. If the entity receives tax-exempt status approval from the IRS within 90 days of forming the entity, then it is exempt from filing. However, in most cases, a new nonprofit entity will not receive tax-exempt status from the IRS within 90 days of registering with the secretary of state or similar office. On average, it takes 3-6 months for the IRS to issue a determination letter which is the official recognition of federal income tax exemption under 501(c). If a nonprofit entity files the initial report with FinCEN and then receives tax exempt status later, then the entity should file an updated report to state the reporting company is now eligible for an exemption.

What information must be reported to FinCEN?

The reporting company must indicate the type of report being submitted (initial report, correction of a prior report, or update to a prior report).

Company information

Reporting companies must provide the following information about itself:

- The legal name of the company.
- Any trade name (DBA) used by the company.
- The current street address of its principal place of business. If the principal place of business is not in the U.S., then the company will report the address from which it conducts business in the U.S.
- Taxpayer identification number (EIN/SSN/ITIN, as appropriate).

Beneficial Owner Information

Reporting companies must provide the following information for each beneficial owner:

- The individual’s legal name; date of birth and residential street address.
- A unique identifying number from an acceptable identification document.
- The name of the state or jurisdiction that issued the acceptable identification document.
- An image of the acceptable identification document.

Company Applicant Information, if required

A reporting company created on or after January 1, 2024, must provide the following information for the company applicant:

- The individual’s legal name; date of birth and complete current address.
 - Report the individual’s residential street address, except for company applicants who form or register a company in the course of their business, such as paralegals. For such individuals, report the business street address. The address is not required to be in the United States.
- A unique identifying number from an acceptable identification document.
- The name of the state or jurisdiction that issued the acceptable identification document.
- An image of the acceptable identification document.

What is an acceptable identification document?

An acceptable identification document is one of the following:

- A non-expired driver’s license issued by a U.S. jurisdiction.
- A non-expired identification document issued by a U.S. jurisdiction, local government, or Indian Tribe used for the purposes of identifying the individual.
- A non-expired passport issued by the U.S. government.
- If the individual does not have any of the three forms of identification described above, then they may provide the identifying number from a non-expired passport issued by a foreign government.

Who is a beneficial owner of a reporting company?

A beneficial owner is any individual (1) who directly or indirectly exercises “substantial control” over the reporting company, or (2) who directly or indirectly owns or controls 25 percent or more of the “ownership interests” of the reporting company.

An individual can exercise “substantial control” over a reporting company if they direct, determine, or exercise substantial influence over important decisions the reporting company makes. This includes senior officers in the reporting company or individuals who have authority over the appointment or removal of senior officers or a majority of the board.

“Ownership interests” generally refer to arrangements that establish ownership rights in the reporting company, including simple shares of stock as well as more complex instruments.

For additional information on “substantial control” and “ownership interests” please review the language in the Beneficial Ownership Information Reporting Regulations: <https://www.govinfo.gov/content/pkg/FR-2022-09-30/pdf/2022-21020.pdf> or on the FinCEN website <https://www.fincen.gov/boi-faqs>

Are there any exceptions to the definition of “beneficial owner?”

There are a few limited exceptions to who qualifies as a beneficial owner. Under the Rule, minor children (provided a parent or legal guardian is reported as a beneficial owner), nominees, employees (excluding senior officers), future inheritors, and creditors do not qualify as beneficial owners.

Who is a company applicant of a reporting company?

There may be up to two individuals who qualify as a company applicant.

- The individual who directly submitted the document that creates the entity, or in the case of a foreign reporting company, the document that first registers the entity to do business in the U.S.
- The individual that is primarily responsible for directing or controlling the submission of the relevant document by another.

If only one person was involved in submitting the document to create or register the business, then only one person qualifies as the company applicant. No reporting company may have more than two company applicants. For example, if an individual is creating a new business and prepares and submits the formation document to the Secretary of State, then this individual is the only company applicant. However, if an individual is creating a new business and prepares the formation document but asks their administrative assistant to submit the document with the Secretary of State, then the individual and the administrative assistant are both company applicants. The individual was primarily responsible for directing or controlling the formation document and the administrative assistant directly submitted the document.

Only reporting companies created or registered to do business in the U.S. on or after January 1, 2024, must report company applicant information. This requirement will not apply to an entity created or registered prior to January 1, 2024. Additional information on determining the company applicant can be found here:

<https://www.fincen.gov/boi-faqs>

Is there a fee for submitting the BOI report to FinCEN?

No, there is no fee for submitting the BOI report to FinCEN.

How are BOI reports submitted to FinCEN?

Reporting companies will submit reports electronically through FinCEN’s Beneficial Ownership Secure System (BOSS). Reports will not be accepted prior to January 1, 2024.

Note: Beware of potential scam websites! This new filing requirement is likely to result in scam websites or organizations attempting to trick internet users and business owners to enter their beneficial ownership information into a scam website. They may lure users through many communication channels, such as social media, email, and text messaging. Search results are sometimes manipulated through search engine optimization methods, leading to malicious sites appearing in top positions.

Reporting companies **should not** report beneficial ownership information to any organization except for FinCEN. Websites are often set up to spoof a legitimate site. This is done by using a domain name that looks or sounds like legitimate site addresses. For example, instead of IRS.gov, a spoof site might use IRS.com or IRS.org. When submitting the report to FinCEN, be sure to go to the online filing system on [United States Department of the Treasury Financial Crimes Enforcement Network | FinCEN.gov](https://www.fincen.gov).

Will the Secretary of State or similar offices collect beneficial ownership information?

No. The beneficial ownership information required by the Corporate Transparency Act should **only** be submitted directly to FinCEN through the online filing system at FinCEN.gov. To protect your privacy, you **should not** include this information when forming or registering the business with the secretary of state or similar office.

Who will have access to reported beneficial ownership information and for what purpose?

FinCEN issued the Access Rule to prescribe the circumstances under which BOI, reported to FinCEN, may be disclosed to other recipients and how it must be protected. The Access Rule states BOI may be provided to (1) U.S. Federal agencies engaged in national security, intelligence, or law enforcement activity; (2) U.S. State, local, and Tribal law enforcement agencies with court authorization; (3) Foreign requesters, provided their requests meet certain criteria; (4) Financial institutions subject to customer due diligence requirements; (5) Federal functional regulators and other regulatory agencies acting in a supervisory capacity assessing financial institutions for compliance with customer due diligence requirements; and (6) U.S. Department of the Treasury officers and employees who require access to perform their job duties. Each category of authorized recipients is subject to security and confidentiality protocols.

Is a reporting company required to update information with FinCEN if beneficial ownership information changes?

Yes, updates must be submitted to FinCEN within 30 calendar days after the change occurs. Updates include any change to the information reported for the reporting company, any change in beneficial owners, or the information reported for a beneficial owner such as their name, address or unique identifying number provided in a BOI report.

Is a reporting company required to notify FinCEN if information on a BOI report was inaccurate?

Yes, a reporting company must submit a corrected BOI report when previously reported information was inaccurate when filed and remains inaccurate. The reporting company must correct the report no later than 30 calendar days after the reporting company becomes aware or has reason to know of an inaccuracy. Corrections include any inaccuracy in the information provided about the reporting company, its beneficial owners, or its company applicants. There are no penalties for filing an inaccurate BOI report provided it is corrected within 90 calendar days of when it was filed.

If a reporting company files an initial report, but subsequently becomes eligible for an exemption do they have to notify FinCEN?

Yes, if a reporting company subsequently becomes eligible for an exemption from the reporting requirement after the filing of its initial report, this will be deemed a change requiring an updated report.

Is this an annual reporting requirement?

No, the law only requires an initial report, updated report (when necessary), and a corrected report (when necessary).

What is a FinCEN Identifier? How can a FinCEN Identifier be obtained?

A FinCEN identifier is a unique number issued by FinCEN to individuals and reporting companies. Each FinCEN identifier is specific to the individual or the reporting company and only one FinCEN identifier can be obtained by that individual or company. It is not a requirement for a reporting company or individual to obtain a

FinCEN identifier. A reporting company may report another entity's FinCEN Identifier and full legal name in lieu of information about the individual beneficial owner if criteria set forth in the BOI rule is met.

A reporting company may obtain a FinCEN identifier by checking a box on the beneficial ownership information report when they submit the report. After submitting the report, the reporting company will receive a FinCEN identifier unique to that company. If a reporting company would like to request a FinCEN identifier after submitting its initial report, the company may submit an updated BOI report to request a FinCEN identifier, even if the company does not otherwise need to update its information.

An individual may apply for a FinCEN identifier by submitting an electronic web form. An individual may seek a FinCEN identifier for data security purposes and/or administrative efficiency. Individuals who are likely to be identified as the beneficial owner or company applicant of many reporting companies may prefer the ease of a FinCEN identifier as the individual may provide their FinCEN identifier to reporting companies rather than providing their personal information.

The FinCEN identifier application requires the information that otherwise must be set forth in the initial BOI report about that individual such as the individual's legal name, date of birth, address, and identifying document type and number.

How does an individual update or correct information from the FinCEN Identifier application?

If there is a change to information previously submitted to FinCEN in the application for the FinCEN identifier, the individual must report any change to the information no later than 30 days after the date on which the change occurred. If there is any inaccuracy in the information provided, the individual must correct the information no later than 30 days after the date the individual became aware of the inaccuracy or had reason to know of it.

How does a reporting company update or correct information from the FinCEN Identifier application?

Reporting companies with a FinCEN identifier update or correct the company's information by filing an updated or corrected beneficial ownership information report, as appropriate.

Will evidence be provided when a BOI report is filed with FinCEN?

Yes. FinCEN indicates that a submission receipt with the reporting companies FinCEN Identifier, if requested, will be provided at the time of filing.

What happens if a reporting company fails to report beneficial ownership information?

The CTA provides that willfully reporting or attempting to report false or fraudulent beneficial ownership, or willfully failing to report or make updates to the reported data shall be punished with a civil penalty of up to \$500 for each day that the violation continues, or criminal penalties, including imprisonment for up to two years and/or a fine of up to \$10,000.

Where can I get more information on this topic?

Information is available on FinCEN's website: www.fincen.gov/boi.

[FinCEN FAQs](#)

[FinCEN's Small Entity Compliance Guide](#)

Who do I contact if I have additional questions?

Contact FinCEN if you have additional questions:

Email: FRC@fincen.gov

Website: <https://www.fincen.gov/contact>