

Beneficial Ownership Information Reporting Under the Corporate Transparency Act

Update

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On January 1, 2024, the reporting requirements under the Corporate Transparency Act (CTA) became effective. The CTA was enacted by Congress on January 1, 2021, as part of the Anti-Money Laundering Act of 2020 and requires certain types of entities to report beneficial ownership information (BOI), unless exempt. The design and implementation of the reporting regime was left to the Financial Crimes Enforcement Network (FinCEN) of the US Department of the Treasury. The entities required to report, information to be reported and certain exemptions from reporting are described below.

Bracewell CTA Task Force

Bracewell LLP has formed a task force to stay apprised of FinCEN's rulemaking process and respond to client questions. In recent months, we have fielded a number of inquiries. The most common question is: "When must I file my report?" Entities that existed prior to January 1, 2024, will have until January 1, 2025, to make their initial filing. Entities formed during 2024 have 90 days after receiving notice that the entity's creation or registration is effective. Entities formed on or after January 1, 2025, will have 30 days from notice of creation or registration.

This means that there is still ample time for you and your organization to determine: (i) whether a report must be made; and (ii) if so, who the beneficial owners are that will be identified in your report.

As next steps for your entity, we encourage you to (i) determine whether a report is required for entities in your organization; (ii) organize and file the initial reports; and (iii) establish policies and procedures designed to ensure that

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reports present accurate information that need not be updated, including periodic confirmations of the contents of any report previously submitted.

Bracewell's CTA task force is prepared to help our clients with questions related to BOI reporting under the CTA. Please contact your Bracewell lawyers to coordinate assistance with CTA questions.

Background

The CTA is intended to address gaps in state-level information reporting requirements for business entities. Information will be reported through the Beneficial Ownership Secure System (BOSS), a secure database managed by FinCEN meant to be accessible by a select number of government agencies, financial institutions and regulators.

Who Must Report?

Any reporting company that does not qualify for one of 23 exemptions included in the CTA must file a report. The following qualify as a **reporting company**:

1. Domestic corporations, limited liability companies, and entities created by filing formation documents with a state (e.g., limited partnerships and statutory trusts); and
2. Foreign corporations, limited liability companies and entities that are registered to do business in a state.

Who Is Exempt?

The CTA enumerated 23 exemptions. Many of the 23 exemptions describe entities that are already subject to reporting requirements under other laws and regulations, including SEC reporting companies, banks, bank holding companies, utilities and investment advisers registered with the SEC. Other exemptions include:

1. *Large Operating Companies*: Large Operating Companies are entities that employ more than 20 full-time employees in the United States, have over \$5 million in gross receipts or sales from US sources and activities, and have an operating presence at a physical location in the United States.
2. *Subsidiaries of Current Exempt Entities*: If an entity is wholly owned by certain exempt entities (including SEC reporting companies and Large Operating Companies), then the subsidiary will also be exempt.

3. *Certain Tax-Exempt Entities*: Includes any entity that is an organization described in Section 501(c) of the Internal Revenue Code of 1986 and exempt from tax under Section 501(a) of the Code.

Who Is a Beneficial Owner?

Beneficial owners are *individuals* who either (i) own or control at least 25 percent of the ownership interests of the reporting company or (ii) exercise substantial control over the reporting company. The second category includes senior officers of the reporting company, anyone who has authority over the appointment or removal of senior officers or the majority of the board, and anyone who has substantial influence or makes important decisions for the company regarding things like the scope of business, reorganizations or mergers, and major expenditures and investments. While not expressly included, members of a governing body (i.e., directors or managers on a board) may be viewed to have substantial influence or make important decisions.

If you have determined a report is required, then identifying the beneficial owners is an exercise that will require a certain level of analysis based on the entity's ownership and governance. The beneficial owners may also change as an entity's ownership and governance change.

Information in Report

The information required to be reported includes the following:

1. *Reporting Company*: The initial report must provide the full name of the reporting company, any trade names or "doing business as" names it uses, an address for the company's principal place of business or primary location, its jurisdiction of formation or registration, and its IRS tax ID number or EIN.
2. *Beneficial Owners*: Every beneficial owner of the reporting company must be included in the initial report. The following information must be provided for every beneficial owner: their full legal name, date of birth, current address, and ID number and issuing jurisdiction for the owner's passport, identification document, driver's license, or foreign passport. Additionally, an image of the owner's passport, identification document, driver's license, or foreign passport must be included in the report. As an alternative, a beneficial owner may request a FinCEN identifier from FinCEN and provide the reporting company their identifier for purposes of the report.
3. *Company Applicants*: The report for any entity *formed on or after January 1, 2024* must also identify the company applicants. A "company applicant" is (i) an individual who filed the formation or

registration documents for the reporting company and (ii) the individual primarily responsible for directing or controlling such filings. At least one but no more than two company applicants must be included in the report. The report must include each company applicant's name, date of birth, address, and identifying number from a passport, driver's license, or other identification document. As an alternative, a company applicant may provide the reporting company their FinCEN identified for purposes of the report.

Updates to Reports

The CTA does not impose any periodic reporting requirements on reporting companies. Instead, any change to information previously reported needs to be reported within 30 days of the change. Likewise, if any report to FinCEN contains inaccurate information about the reporting company, beneficial owners or company applicants, the reporting company must file a correction with FinCEN within 30 days. Reporting companies must also update FinCEN within 30 days if they begin to qualify for an exemption. Exempt companies that lose their exemption will be required to make an initial report within 30 days of losing their exemption.

Next Steps

We encourage you to review the [Beneficial Ownership Information Reporting Rule](#) to determine whether your entity is a reporting company. If you determine that your entity is a reporting company, you will need to gather the information listed above for your company, beneficial owners, and company applicants, if applicable. Once you have gathered the necessary information, you can submit an initial report through [FinCEN's BOI E-Filing website](#).

Reporting companies should be prepared to provide updates to FinCEN if any information they previously reported changes. As such, reporting companies should establish policies and procedures to gather and keep track of this information. They should periodically review this information to ensure that information reported to FinCEN is accurate and current. Additionally, both reporting companies and exempt entities should periodically review FinCEN's requirements to ensure that their exemption status has not changed.