

FREQUENTLY ASKED QUESTIONS

Beneficial Ownership Reporting

The U.S. federal government has enacted the Corporate Transparency Act with the aim of enhancing corporate transparency and preventing illicit financial activities. Beginning January 1, 2024, non-exempt companies will be required to file Beneficial Ownership Information reports to the Financial Crimes Enforcement Network (FinCEN).

What is the Corporate Transparency Act?

The Corporate Transparency Act (the "CTA") was enacted by Congress in January 2021 and its primary purpose is to prevent money laundering and other illicit activities by requiring companies formed or registered in the United States to disclose the names of the individuals who own or control the entity. The CTA requires entities to file a beneficial ownership information report with The Financial Crimes Enforcement Network ("FinCEN"), a division of the Treasury Department.

Who is a beneficial owner?

A beneficial owner is an individual who, directly or indirectly, exercises substantial control over the entity or owns or controls not less than 25 percent of the ownership interests of the entity. There are a few exceptions, such as the minor children of a beneficial owner or a person who is solely an employee of the reporting company.

What information must a beneficial owner provide?

Full legal name

Date of birth

Current address (must be physical address)

Unique identifying number from an acceptable identification document defined as:

- (i) a non-expired U.S. passport;
- (ii) a non-expired identification document issued by a state, local government or Indian tribe;
- (iii) a non-expired driver's license issued by a state; or
- (iv) if the individual lacks all of the foregoing documents, a non-expired foreign passport.

Image of the document the unique identifying number came from.

How do I provide the beneficial ownership to FinCEN?

The process has not been announced by FinCEN yet, but it will be a digital process that the Treasury Department will announce before the CTA goes into effect.

What is a company applicant?

Company applicant is defined as the following 2 persons:

- a) the individual who directly files 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 United States.
- b) the individual who is primarily responsible for directing or controlling the filing of the relevant document by another.

What information does a company applicant need to provide?

Full legal name

Date of birth

Current address (must be physical address)

Unique identifying number from an acceptable identification document defined as:

- (i) a non-expired U.S. passport;
- (ii) a non-expired identification document issued by a state, local government or Indian tribe;
- (iii) a non-expired driver's license issued by a state; or
- (iv) if the individual lacks all of the foregoing documents, a non-expired foreign passport.

Image of the document the unique identifying number came from.

Important Note: Applicant information is NOT required to be reported for entities already formed or registered prior to the January 1, 2024, effective date.

What information is a reporting company required to provide?

Full legal name

Any trade or "doing business as" names

A complete current address consisting of:

- (i) in the case of a reporting company with a principal place of business in the United States, the street address* of the principal place of business,
 - (ii) in all other cases, the street address* of the primary location in the United States where the reporting company conducts business,
- *must be a physical address

The state, tribal, or foreign jurisdiction of formation,

For a foreign reporting company, the state or tribal jurisdiction where the company first registers

The IRS Taxpayer Identification Number (TIN) (including an Employer Identification Number) or where a foreign reporting company has not been issued a TIN, a tax identification number issued by a foreign jurisdiction and the name of that jurisdiction.

What happens if I provide incorrect information to FinCEN?

If someone sends information that is incorrect or not up to date, there is a safe harbor for up to 90 days if the correct information is sent in.

What immediate action should I take?

At the present time there is no option to file reports and the mandate is not effective yet. There is no immediate action needed other than preparation.

We recommend the following preparatory actions:

Review any entities you own or manage, and determine if they are exempt (see the Chart of Exempt entities on the last page). If they are not, begin the process of gathering the required information so that you are ready to report the information

How long will FinCEN hold the beneficial owner's information?

Information is required to be held onto for five years after termination or dissolution of the entity.

Is the beneficial owner information available to the public?

Beneficial owner information is confidential and not available to the public. Government employees, officers, and financial employees will not be able to access the information.

What are the penalties for not filing or filing misinformation?

Civil penalties for a violation are up to \$500 per day, or Criminal penalties of up to 2 years of imprisonment and/or a fine up to \$10,000

Are there any exemptions?

The final rule has 23 exemptions - a company that qualifies for an exemption is not considered a reporting company and does not have to file the BOI report (see Chart 2 on the last page of this document)

Among the many exemptions are companies that are already regulated such as publicly traded companies; insurance companies; and broker-dealers. There is also a 'large operating company' exemption which applies to entities that (1) have 20 or more full-time employees in the U.S., and (2) filed an income tax return in the previous year with at least \$5 million in gross receipts or sales, and (3) have an operating presence or physical office within the U.S.

Is there a report required for each state our company is registered in?

Each reporting company is only required to file its BOI with FinCEN, a federal agency. There is no state filing requirement. However, if a Beneficial Owner changes their name and/or address or the reporting company changes its name, domestic state, entity type, etc. they will be required to update the information with FinCEN within 30 days of the change. Otherwise, there is no requirement to file a new report each time a company registers in a new state.

Keep in mind however, if an entity adopts a new DBA in the process of registering in a state, an update would need to be filed with FinCEN within 30 days to report the new DBA being used.

Does CTA apply to all entities or only corporations?

Any entity deemed as a "reporting company" - will be required to report their beneficial ownership information to FinCEN. There are two types of reporting companies - domestic reporting companies and foreign reporting companies.

A domestic reporting company is defined as a corporation, a limited liability company, or any other entity created by the filing of a document with a secretary of state or any similar office under the law of a state or Indian tribe.

A foreign reporting company is any entity that is a corporation, limited liability company, or other entity formed under the law of a foreign country, AND registered to do business in any U.S. state or in any Tribal jurisdiction, by the filing of a document with a secretary of state or any similar office under the law of a U.S. state or Indian tribe.

If you had to file a document with a state or Indian Tribal-level office such as a secretary of state to create your company, or to register it to do business if it is a foreign company, then your company is a reporting company, unless an exemption applies. For the definitions of both domestic and foreign reporting companies, a "state" means any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, American Samoa, Guam, the U.S. Virgin Islands, and any other commonwealth, territory, or possession of the United States.

**Entity should refer to reporting exemptions as well to confirm if they fit any of the 23 exemption requirements

Are all S and C Corps required to report the BOI?

The requirement to report is not associated with the entity's tax status but rather, whether or not they meet the definition of a reporting company.

Can a business owner also be the company applicant?

Yes, it is possible that the business owner would be considered the company applicant if they fit the requirement/description of a company applicant.

Please note: There can be up to two individuals who qualify as company applicants; the individual who directly files the document that creates, or first registers, the reporting company; and the individual who is primarily responsible for directing or controlling the filing of the relevant document.

No reporting company will have more than two company applicants. If only one person was involved in filing the relevant document, then only that person should be reported as a company applicant.

Only reporting companies formed or registered on or after January 1, 2024, will have to report their company applicants. Companies created or registered before January 1, 2024, do not have to report their company applicants. The following examples illustrate how to identify company applicants in common company creation or registration scenarios.

Example 1: Individual A is creating a new company. Individual A prepares the necessary documents to create the company and files them with the relevant state or Tribal office, either in person or using a self-service online portal. No one else is involved in preparing, directing, or making the filing. Individual A is a company applicant because Individual A directly filed the document that created the company. Because Individual A is the only person involved in the filing, Individual A is the only company applicant. State or Tribal employees who receive and process the company creation or formation documents should not be reported as company applicants.

Example 2: Individual A is creating a company. Individual A prepares the necessary documents to create the company and directs Individual B to file the documents with the relevant state or Tribal office. Individual B then directly files the documents that created the company. Individuals A and B are both company applicants as Individual B directly filed the documents, and Individual A was primarily responsible for directing or controlling the filing. Individual B could, for example, be Individual A's spouse, business partner, attorney, or accountant; in all cases, Individuals A and B are both company applicants in this scenario.

Additional Facts:

The Corporate Transparency Act authorizes FinCEN to disclose beneficial ownership information in certain circumstances to six types of requesters:

- U.S. Federal agencies engaged in national security, intelligence, and law enforcement activities
- State, local, and Tribal law enforcement agencies with court authorization
- The U.S. Department of the Treasury
- Financial institutions using beneficial ownership information to conduct legally required customer due diligence, provided the financial institutions have their customer consent to retrieve the information
- Federal and state regulators assessing financial institutions for compliance with legally required customer due diligence obligations
- Foreign law enforcement agencies and certain other foreign authorities who submit qualifying requests for the information through a U.S. Federal agency.

The Corporate Transparency Act imposes stringent access requirements and safeguards on each group of requesters.

What if my company is inactive:

FinCEN proposed to define an "inactive entity" as one that was in existence on or before January 1, 2020 (i.e., the date of enactment of the CTA), is not engaged in active business, is not owned by a foreign person, whether directly or indirectly, wholly or partially, has not experienced any change in ownership in the preceding 12-month period, has not sent or received any funds in an amount greater than \$1,000, either directly or through any financial account in which the entity or any affiliate of the entity had an interest, in the preceding 12-month period, and does not otherwise hold any kind or type of assets, whether in the United States or abroad, including any ownership interest in any corporation, limited liability company, or other similar entity.

Chart 2 – Reporting company exemptions

Exemption No.	Exemption Short Title
1	Securities reporting issuer
2	Governmental authority
3	Bank
4	Credit union
5	Depository institution holding company
6	Money services business
7	Broker or dealer in securities
8	Securities exchange or clearing agency
9	Other Exchange Act registered entity
10	Investment company or investment adviser
11	Venture capital fund adviser
12	Insurance company
13	State-licensed insurance producer
14	Commodity Exchange Act registered entity
15	Accounting firm
16	Public utility
17	Financial market utility
18	Pooled investment vehicle
19	Tax-exempt entity
20	Entity assisting a tax-exempt entity
21	Large operating company
22	Subsidiary of certain exempt entities
23	Inactive entity