



BERKOWITZ,
TRAGER &
TRAGER, LLC

**THE CORPORATE
TRANSPARENCY ACT**

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The Corporate Transparency Act

The Corporate Transparency Act (“CTA”) and its implementing regulations (“FinCEN Regulations”) became effective on January 1, 2024. As a result, certain reporting companies are required to disclose information, including information about their beneficial owners, to the U.S. Treasury Department’s Financial Crimes Enforcement Network (“FinCEN”).

The CTA is being challenged in various judicial arenas. On March 1, 2024, the U.S. District Court of the Northern District of Alabama declared that the CTA was unconstitutional and permanently enjoined the enforcement of the CTA against the plaintiffs in that action. The CTA remains enforceable against all others. Nevertheless, on March 1, 2024, FinCEN confirmed that it would continue to enforce the CTA against any company required to make disclosures under the CTA and not covered by the court’s order.

Frequently asked questions regarding pertinent provisions of the CTA and the FinCEN Regulations are set out below. The information provided below is not exhaustive, as the CTA and the FinCEN Regulations are extensive. For more information, please visit <https://www.fincen.gov/boi-faqs> (FAQs), <https://www.fincen.gov/boi/small-entity-compliance-guide> (Small Entity Compliance Guide), or reach out to our Firm.

Why was the CTA enacted?

The CTA (and the FinCEN Regulations) are designed to enable FinCEN to identify individuals that own or exercise control of entities doing business in the United States. The intention is to combat money laundering, terrorist financing, corruption, tax fraud and other illicit activity. Entities subject to the CTA must file a Beneficial Ownership Information Report (“BOI Report”) within the timeframes set out in the CTA.

Which entities are subject to the CTA?

Corporations, limited liability companies, limited partnerships, statutory trusts, LLPs, LLLPs and other entities that are created by the filing of a document with a secretary of state or similar office of a U.S. state or tribal jurisdiction are subject to the CTA. As presently written, this includes homeowners’ associations, condominium associations and similar entities that were formed by the filing of a document with a secretary of state or similar office, unless it otherwise qualifies for an exemption. Foreign entities that are registered to do business in the U.S. are also subject to the CTA. All of the foregoing are referred to as “Reporting Companies.”

Are any entities exempt from the CTA’s filing requirements?

There are 23 types of entities that are exempt from filing a BOI Report. In general, specific requirements must be met to qualify for exemption. See Exhibit A attached for a list of the exemption short titles. Companies should review the list and the specific requirements carefully to confirm that an exemption applies. The list is also found at Chapter 1.2 of the Small Business Compliance Guide.

See <https://www.fincen.gov/boi/small-entity-compliance-guide>.



What information must be reported by a Reporting Company?

A Reporting Company (that is not exempt) must provide the following information in its BOI Report:

- full legal name of the Reporting Company;
- any trade names or DBAs (whether registered or not);
- address of principal place of business if a domestic Reporting Company, or primary location in the U.S. where the Reporting Company conducts business if a foreign Reporting Company (P.O. boxes and addresses of agents are not acceptable);
- jurisdiction of formation;
- for a foreign Reporting Company, the state or tribal jurisdiction where the Reporting Company first registers in the U.S.;
- taxpayer ID (must be IRS-issued if held by the Reporting Company, and if issued by a foreign jurisdiction, the name of the jurisdiction);
- identity and certain other information regarding each beneficial owner; and
- each company applicant (as defined below), if applicable.

Who are the Beneficial Owners of a Reporting Company?

A beneficial owner is an individual who either directly or indirectly (i) exercises substantial control over the Reporting Company, or (ii) owns or controls 25% or more of the Reporting Company's ownership interests. Reporting Companies are required to identify all individuals who exercise substantial control over the Reporting Company. See Exhibit B attached for a description of ownership interests and what it means to exercise substantial control. Checklists and examples that will assist in identifying beneficial owners are found in Chapter 2 of the Small Entity Compliance Guide at <https://www.fincen.gov/boi/small-entity-compliance-guide>.

Are there exemptions from the definition of Beneficial Owner?

Yes. The following are exempt:

- a minor child;
- an individual acting as a nominee, intermediary, custodian or agent on behalf of another;
- an individual acting solely as an employee of an entity (other than an employee who is a senior officer);
- an individual whose only interest in an entity is through a future right of inheritance and not a present interest; and
- a creditor of a Reporting Company whose rights or interests are solely for the payment of a predetermined sum of money or a loan covenant or similar covenant associated with the right to receive payment that is intended to secure or enhance the likelihood of repayment.



What information must be reported with respect to a Beneficial Owner?

A Reporting Company must provide the following information with respect to each beneficial owner:

- full name;
- date of birth;
- residential address; and
- a form of identification (i.e., a state-issued driver's license or U.S. passport), with a copy of such document uploaded.

Alternatively, a Reporting Company may provide the FinCEN number for the beneficial owner.

What if ownership interests are held in a Trust?

If an ownership interest is held in a Trust and the Trust holds 25% or more of the Reporting Company's ownership interests, then the following individuals must be reported as beneficial owners:

- a trustee or other person with authority to dispose of trust assets (such as a distribution adviser, trust protector or other designated representative, whether acting in a fiduciary capacity or not);
- a beneficiary who is the sole permissible recipient of trust income and principal, or who has the right to demand distribution or withdrawal of substantially all trust assets; and
- a grantor or settlor having the right to revoke the trust or withdraw trust assets.

If a Trust holding 25% or more of the Reporting Company's ownership interests is owned or controlled through a trust arrangement with a corporate trustee, the Reporting Company must determine whether any of the corporate trustee's individual beneficial owners indirectly own or control 25% or more of the ownership interests of the Reporting Company through their ownership interests in the corporate trustee.

The Reporting Company may, but is not required to, report the name of the corporate trustee in lieu of information about an individual beneficial owner only if all of the following conditions are met:

- the corporate trustee is itself an entity that is exempt from the reporting requirements;
- the individual beneficial owner owns or controls 25% or more of the ownership interests of the Reporting Company only by virtue of ownership interests in the corporate trustee; and
- the individual beneficial owner does not exercise substantial control over the Reporting Company.



When does an Initial Beneficial Ownership Report need to be filed?

- Reporting Companies formed in calendar year 2024 must file the initial report within 90 calendar days of formation.
- Reporting Companies in existence before January 1, 2024 must file the initial report by January 1, 2025.
- Reporting Companies formed on or after January 1, 2025 must file the initial report within 30 days of formation.

Do I have to file an Initial Beneficial Ownership Report if my Reporting Company was in existence on or after January 1, 2024 but was dissolved prior to December 31, 2024?

Yes. FinCEN clarified that a Reporting Company that does not qualify for an exemption from filing a BOI Report and continues to exist for any period following January 1, 2024, is required to file a BOI Report.



Who is the Company Applicant of a Reporting Company?

A Company Applicant is the individual who directly files the document that creates the domestic Reporting Company, or the individual that registers a foreign entity to do business in the U.S., and the individual primarily responsible for directing or controlling such filing, if more than one person is involved in the filing. For Reporting Companies formed on or after January 1, 2024, there will be at least one but not more than two Company Applicants. For Reporting Companies formed prior to January 1, 2024, the Reporting Company need not provide any information with respect to a Company Applicant.

How do I file a BOI Report?

The BOI Report can be filed directly with FinCEN <https://fincen.gov/boi>. There is no filing fee to file a BOI Report with FinCEN.



What is a FinCEN number and how do I obtain a FinCEN number?

A FinCEN number is a unique identifying number that FinCEN will issue to an individual or to a Reporting Company upon request. In order to obtain a FinCEN number, an individual must provide FinCEN with the same information that the individual otherwise would be required to report to the relevant Reporting Company. The link to obtain a FinCEN number can be found here: <https://fincenid.fincen.gov>.

Do updated BOI reports need to be filed?

Yes. Updated reports need to be filed any time there is any change to the required information about the Reporting Company or the beneficial ownership information. This includes, among other things, changes to officers and directors, a change in the capitalization of the Reporting Company and entering into a new agreement that might grant certain approval rights or veto rights. In addition, if a Reporting Company qualifies for an exemption but thereafter ceases to be qualified for an exemption, an updated BOI Report should be filed. An updated BOI report must be filed within 30 calendar days of the change or the date the Reporting Company becomes aware of the change. The same 30-day timeline applies to information submitted by an individual in order to obtain a FinCEN identifier that subsequently changes.

If the Reporting Company becomes aware of an inaccuracy in a previously filed report, a corrected filing must be made within 30 days of the Reporting Company becoming aware of, or having reason to know of, the inaccuracy. However, there is a safe harbor from penalties if the Reporting Company becomes aware of inaccurate information and there are no penalties for filing an inaccurate BOI Report, provided it is corrected within 90 calendar days of when it was filed.

What are the consequences of failing to file?

The willful failure to report complete or updated beneficial ownership information, or the willful provision of or attempt to provide false or fraudulent beneficial ownership information may result in civil or criminal penalties, including civil penalties of up to \$591 per day for each day that the violation continues, up to a maximum of \$10,000, and criminal penalties of up to two years in prison.



Exhibit A

Exemption Number

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



Beneficial Ownership, Ownership Interests and Substantial Control

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 ownership interests of the Reporting Company.

What is substantial control?

Individuals that exercise substantial control over a Reporting Company, including the following:

- any individual holding the position or exercising the authority of a President, Chief Financial Officer, General Counsel, Chief Executive Officer, Chief Operating Officer or any other officer of the Reporting Company, regardless of official title, who performs a similar function (each, a “Senior Officer”);
- any individual with the ability to appoint or remove any Senior Officer or a majority of the Reporting Company’s Board of Directors;
- any individual who directs, determines or has substantial influence over important decisions made by the Reporting Company regarding the Reporting Company’s business, finances or structure; and
- any individual who exerts any other form of substantial control over the Reporting Company.



Is a member of the Reporting Company's Board of Directors always a beneficial owner of the Reporting Company?

No. A Reporting Company must consider, on a director by director basis, whether a particular director exercises substantial control in accordance with the factors listed above. However, FinCEN does not provide any specific guidance regarding the circumstances under which a director should be identified.

What is an ownership interest?

Ownership interests include:

- any equity, stock or similar instrument;
- A preorganization certificate or subscription;
- A transferable share of, or voting trust certificate or certificate of deposit for, an equity security, interest in a joint venture or certificate of interest in a business trust;
- capital or profits interests;
- instruments convertible into the foregoing (e.g., SAFE, convertible notes, etc.);
- warrants or rights, and options to acquire an ownership interest in a Reporting Company, even if such warrant or right is a debt;
- any put, call, straddle or other option or privilege of buying any ownership interest in a Reporting Company (except if the option or privilege is created and held by others without the knowledge or involvement of the Reporting Company); and
- any other instrument, contract, arrangement, understanding, relationship or mechanism used to establish ownership.

What about debt?

Debt is considered an ownership interest only if it enables the holder to exercise the same rights as an equity interest, including the right to convert the debt into equity or other ownership instrument.

How is total ownership calculated?

Total ownership is calculated as a percentage of the total outstanding ownership interests.

- The calculation is performed at the present time, assuming all options and convertible securities are exercised.
- For Reporting Companies that issue capital or profits interests, the individual's ownership interests are the individual's capital and profit interests in the Reporting Company, calculated as a percentage of the total outstanding capital and profit interests in the Reporting Company.
- For corporations, entities treated as corporations for federal income tax purposes, and other Reporting Companies that issue shares of stock, the applicable percentage is the greater of (i) the total combined voting power of all classes of ownership interests of the individual as a percentage of the total outstanding voting power of all classes of ownership interests entitled to vote, and (ii) the total combined value of the ownership interests of the individual as a percentage of the total outstanding value of all classes of ownership interests.

If the facts and circumstances do not permit such calculations to be performed with reasonable certainty, then any individual who owns 25% or more of any class or type of ownership interest of a Reporting Company shall be deemed to own or control 25% or more of the ownership interests of the Reporting Company.

If a Reporting Company is owned by multiple indirect owners through other entities, the determination is made by looking at the ownership of the entities. For example, if Company A holds 40% in a Reporting Company, and two individuals each own 50% each of Company A, they would each beneficially own 20% of the Reporting Company, and absent any other indicia of substantial control, neither of them would be considered a beneficial owner of the Reporting Company.