

## Regulations Broadcasted Pursuant To The Federal Corporate Transparency Act Effective as of January 1, 2024

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Regulations promulgated pursuant to the federal Corporate Transparency Act (the “CTA”) became effective as of January 1, 2024. The CTA and its implementing regulations are intended to help prevent and combat money laundering, terrorist financing, corruption, tax fraud, and other illicit activity by requiring a “reporting company” doing business in the United States to report to the Financial Criminal Enforcement Network (“FinCEN”) limited identifying information about the company, individuals who form or register it, individuals who own 25% or more of its ownership interests and individuals who exercise substantial control over it.

As an initial matter, the CTA only applies to entities created or registered by filing a document with the secretary of state or similar office in the United States. Accordingly, a sole proprietorship is not subject to the CTA reporting requirements, because a sole proprietorship exists without filing a document with the secretary of state or similar office. This is also true for trusts that are created and exist by virtue of an agreement, but not as a result of filing a document with the secretary of state or similar office. However, even though a single member limited liability company is taxed as a sole proprietorship, if it does not meet one of the 23 exceptions noted below it may be subject to the CTA reporting requirements, because a limited liability company is created by filing a document with the secretary of state or similar office.

A reporting company will have to report to FinCEN: (1) Its legal name; (2) Any trade names, “doing business as” (d/b/a), or “trading as” (t/a) names; (3) The current street address of its principal place of business if that address is in the United States (for example, a U.S. reporting company’s headquarters), or, for reporting companies whose principal place of business is outside the United States, the current address from which the company conducts business in the United States (for example, a foreign reporting company’s U.S. headquarters); (4) Its jurisdiction of formation or registration; and (5) Its TIN (or, if a foreign reporting company has not been issued a TIN, a TIN issued by a foreign jurisdiction and the name of the jurisdiction).

There are 23 types of entities that are exempt from the CTA reporting requirements. See the list at this [link](#). One is a large operating company, which is an entity that (1) filed a federal income tax or information return in the United States for the previous year demonstrating more than \$5,000,000 in gross receipts or sales on a consolidated basis, (2) has a physical presence in the United States (a post office box is not sufficient) and (3) directly employs more than 20 full time employees (not full-time equivalent, part-time or independent contractor, and without including or counting employees of affiliated entities).

Among the 23 exceptions is for a tax-exempt entity (see the link [here](#)) that is:

1. One that is described in §501(c) of the Internal Revenue Code of 1986 (the “Code”) (determined without regard to §508(a) of the Code) and exempt from tax under §501(a) of the Code; **OR**
2. One that is described in §501(c) of the Code, and was exempt from tax under §501(a) of the Code, but lost its tax-exempt status less than 180 days ago; **OR**
3. A political organization, as defined in §527(e)(1) of the Code, that is exempt from tax under §527(a) of the Code; **OR**
4. A trust described in paragraph (1) or (2) of §4947(a) of the Code.

Another exception is for an inactive entity (see the link [here](#)), which is an entity that (1) was in existence on or before January 1, 2020, (2) is not engaged in active business, (3) is not owned by a foreign person (as defined

in §7701(a)(30) of the Internal Revenue Code), (4) has not experienced any change in ownership in the preceding 12-month period, (5) 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 (6) does not otherwise hold any kind or type of assets.

For each individual who is a beneficial owner, a reporting company will have to provide to FinCEN: (1) The individual's name; (2) Date of birth; (3) Residential address; and (4) An identifying number from an acceptable identification document such as a passport or U.S. driver's license, and the name of the issuing state or jurisdiction of identification document along with an image of the identification document used to obtain the identifying number in item (4).

A beneficial owner is any individual who, directly or indirectly (a) exercises substantial control over a reporting company, such as senior officers (such as the president, CEO, COO, CFO, general counsel, etc.), individuals with appointment or removal authority, important decision-makers and individuals who have substantial control in ways other than the foregoing or (b) owns or controls at least 25 percent of the ownership interests of a reporting company, such as equity, stock, or voting rights, capital or profit interests, convertible instruments, options or privileges, or any other instrument, contract, arrangement, understanding, relationship, or mechanism to establish ownership.

Note, a beneficial owner must be an individual. Information regarding historical beneficial owners (prior to the date of the initial beneficial ownership information report) is not required to be reported, but changes to the information that has been reported must be updated within 30 days of the reporting company becoming aware of an inaccuracy or change or having reason to know of an inaccuracy or change.

An individual might be a beneficial owner through substantial control, ownership interests, or both. Reporting companies are not required to report the reason (i.e., substantial control or ownership interests) that an individual is a beneficial owner.

There are five exceptions to the definition of beneficial owner:

1. A minor child, but the reporting company must report information about the parent or legal guardian of the minor child.
2. A nominee, intermediary, custodian, or agent – an individual who merely acts on behalf of an actual beneficial owner as the beneficial owner's nominee, intermediary, custodian or agent.
3. An employee who is not a senior officer and whose substantial control over, or economic benefits from, the reporting company are derived solely from the employment status of the individual as an employee.
4. An inheritor – an individual whose only interest in the reporting company is a future interest through a right of inheritance, such as through a will providing a future interest in a company, but once the individual inherits the interest, this exception no longer applies, and the individual may qualify as a beneficial owner.
5. A creditor - an individual who is entitled to payment from the reporting company to satisfy a loan or debt, so long as this entitlement is the only ownership interest the individual has in the reporting company.

If a beneficial owner owns or controls their ownership interests in a reporting company **exclusively** through **multiple exempt entities** (one of the 23), then the names of all of those exempt entities may be reported to FinCEN instead of the individual beneficial owner's information.

Note that this special rule does not apply when an individual owns or controls ownership interests in a reporting company through **both** exempt and non-exempt entities. In that case, the reporting company must report the individual as a beneficial owner (if no exception applies), but the exempt companies do not need to be listed.

For entities that are formed after January 1, 2024, the information provided to FinCEN with respect to beneficial owners must also identify the individual who directly files the document that creates or registers the company

and, if more than one person is involved in the filing, the individual who is primarily responsible for directing or controlling the filing. The CTA refers to these individuals as “company applicants.” A reporting company will have at least one company applicant, but no more than two company applicants.

For entities formed or registered in the US **before** January 1, 2024, the initial beneficial ownership information report must be filed with FinCEN by January 1, 2025. Company applicant information is not required to be reported for entities formed or registered in the US **before** January 1, 2024.

For entities formed or registered in the US on or after January 1, 2024 but before January 1, 2025, the reporting company must file the initial beneficial ownership information report within 90 days of receiving notice of a company’s creation or registration. Changes to beneficial ownership information (other than with respect to company applicants) must be reported to FinCEN within 30 days of the change. Starting January 1, 2025, the initial beneficial ownership information report must also be filed with FinCEN within 30 days of receiving notice of a company’s creation or registration.

For administrative convenience, FinCEN will issue a unique identifying number to an individual or reporting company upon request after the individual or reporting company provides FinCEN the information that is required to be reported for a reporting company, company applicant or beneficial owner (a “**FinCEN ID**”). A FinCEN ID will allow a reporting company, company applicant or beneficial owner to provide the FinCEN number rather than the list of information required for a beneficial ownership information report and an image of the identification document such as a passport or driver’s license.

An individual or reporting company is not required to obtain a FinCEN ID. Although a reporting company is not obligated to update changes to company applicant information the reporting company has reported, an individual or entity that has obtained a FinCEN ID must report changes (such as a change of address) to FinCEN within 30 days of the change. FinCEN is actively assessing options to allow individuals to deactivate a FinCEN ID to eliminate an ongoing obligation to update the underlying personal information when an individual retires, for example, and has promised to provide additional guidance on this functionality in the future.

Beneficial ownership information reports are to be filed at the following website address - <https://boiefiling.fincen.gov/fileboir>. The form can be completed online or a fillable PDF (link [here](#)) then submitted through the portal at this [link](#). The BOI E-Filing application will provide an acknowledgement of submission success or failure, and the submitter will be able to download a transcript of the beneficial ownership information report.

A person who willfully violates the CTA beneficial ownership information reporting requirements may be subject to civil penalties of up to \$500 for each day that the violation continues. That person may also be subject to criminal penalties of up to two years imprisonment and a fine of up to \$10,000. Note, an enforcement action can be brought against an individual who willfully causes a reporting company’s failure to submit complete or updated beneficial ownership information to FinCEN. This would include a beneficial owner or company applicant who willfully fails to provide required information to a reporting company.