



The Financial Crimes Enforcement Network (FINCEN) Extends Initial Compliance Deadline for the Corporate Transparency Act's Beneficial Ownership Information Reporting Requirements



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The Corporate Transparency Act ("CTA") was enacted in 2021 in an effort to mitigate money-laundering though, up until now, it lacked an enforceable reporting element. The CTA will require most domestic and foreign legal entities - registered to do business in the United States - to disclose information regarding their "beneficial owners" as well as the persons who register or form the entity.

On January 1, 2024, the Beneficial Ownership Information Reporting Rule ("BOI Reporting Rule") becomes effective. The BOI Reporting Rule requires reporting companies submit entity and ownership information to the U.S. Department of Treasury's Financial Crimes Enforcement Network ("FINCEN"). Reporting companies formed or registered between January 1, 2024, and December 31, 2024, will have ninety (90) days from the date formation or registration to comply with the BOI Reporting Rule, while reporting companies formed or registered on or after January 1, 2025, will have thirty (30) days.¹ Existing reporting companies will have thirty (30) days beginning on January 1, 2025.

Leading up to the effective date, we encourage companies to review the Small Entity Compliance Guide² published by FINCEN to understand the nuances and their respective responsibilities regarding the BOI Reporting Rule and the CTA, which the BOI Reporting Rule was promulgated under; determine who their beneficial owners are; who the company applicants are; and begin to gather all required information in order to meet

their reporting compliance deadlines. The CTA provides that a domestic reporting company is a corporation, limited liability company, limited partnership, or other similar entity created by a filing with the Secretary of State or other similar office. A foreign reporting company is a corporation, limited liability company or other similar entity that is created in a foreign country and qualified to do business in the United States. A reporting company must provide the full legal name, any tradename or doing business as name, complete address of the principal place of business, the jurisdiction of formation, and the taxpayer identification number.

The CTA defines a beneficial owner as any individual who directly or indirectly through contract, arrangement, understanding, relationship or otherwise either (I) exercises substantial control over the reporting company or (II) own or controls 25% or more ownership interest in the reporting company. All beneficial owners must provide their full name, date of birth, residential addresses, provide a unique identification number such as an unexpired driver's license or unexpired passport, and upload a color copy of such document to the report.

The CTA further provides twenty-three (23) exemptions to the definition of a reporting company. Exempt entities are, generally, already subject to extensive reporting requirements. One significant exemption is for "large operating companies." A large operating company is an entity that: (I) directly employs more than twenty (20) full-time employees in the United States; (II) has an operating presence at a physical office in the United States; and (III) filed a federal income tax or information return in the past year demonstrating more than \$5 million (\$5,000,000.00) in gross receipts or sales (excluding non-U.S. sourced gross receipts or sales).

In addition to the above, we recommend companies review their governing documents such as shareholder agreements, operating agreements and other contracts with senior executives to incorporate provisions to hold beneficial owners accountable to comply with CTA requirements and reporting obligations. Beneficial owners should agree to indemnify the reporting company and the other beneficial owners of their reporting company for any injury due to their failure to comply.

The CTA provides civil and criminal penalties for any person who willfully provides or attempts to provide false or fraudulent information, including false or fraudulent documentation or fails to report complete or updated information. Such penalties include fines of up to \$500 per day for each violation up to \$10,000 in fines and up to two years in prison.

¹ <https://www.fincen.gov/news/news-releases/fincen-extends-deadline-companies-created-or-registered-2024-file-beneficial>.

² https://www.fincen.gov/sites/default/files/shared/BOI_Small_Compliance_Guide_FINAL_Sept_508C.pdf.

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