

FURTHER REGULATIONS FOR BUSINESSES!

CORPORATE TRANSPARENCY ACT

The Corporate Transparency Act (“CTA”) was enacted by Congress on January 1, 2021, and has substantial reforms to anti-money laundering (AML) laws, with a primary focus on preventing and addressing issues related to money laundering, terrorist financing, corruption, and tax fraud.

The compliance guide and instructions is 57 pages long! I’ve done my best to give you a high-level summary and overview below. If you would like the Small Entity Compliance Guide, please contact me and I’ll provide it to you. I understand and appreciate that many of you reading this are going to be offended and dismayed by this Act and feel a complete invasion of privacy. I hear you loud and clear. We are just starting to file the BOI for the firm and will reach out to you if we can add this service for you and file. There are identity verification requirements that require identify documents and for you to be present that present a challenge to filing.

Key Provisions of the CTA and New Filing Requirements for ALL Entities

The Corporate Transparency Act *mandates* a beneficial ownership reporting requirement for corporations, limited liability companies (LLCs), foreign entities, and others with similar structures operating in the US. Domestic reporting companies are required to file a Beneficial Ownership Information (BOI) report with the Financial Crimes Enforcement Network (FinCEN). FinCEN, a department of U.S. Department of the Treasury. You are also required to report the applicant for your company e.g. the incorporator or promotor (person who files the articles).

Who is a Beneficial Owner of My Company You Ask?

A beneficial owner is any individual who, directly or indirectly exercises substantial control over a reporting company; *or* owns or controls at least 25 percent of the *ownership interests* over a reporting company. A company can have multiple beneficial owners. A reporting company must identify all individuals who exercise substantial control over the company. *See Chart 3 below for all those who must be reported. See also the Questions below re the determination of Substantial Control and Ownership Interests.*

Any of the following may be an ownership interest: equity, stock, or voting rights; a capital or profit interest; convertible instruments; options or other non-binding privileges to buy or sell any of the foregoing; and any other instrument, contract or other mechanism used to establish ownership. *See Chart 4 below.* Note for trusts: a trustee of a trust may exercise substantial control over a company.

Filing Requirements and Timeline

To comply with the CTA, **any domestic reporting company formed on or after January 1, 2024 and before January 1, 2025, that is not subject to exemption, must submit a BOI report to FinCEN within 90 days of registration. Companies formed before January 1, 2024 will have until January 1, 2025 to submit the BOI filing.** The filing forces transparency and accountability, ensuring the ownership structures of entities are documented and accessible for regulatory scrutiny. ([Beneficial Ownership Information Reporting | FinCEN.gov](#)).



Additionally, entities that transition into foreign reporting companies on or after January 1, 2024, are also subject to the BOI reporting requirement. In this case, a BOI report must be filed with FinCEN within 30 to 90 calendar days of the effective date of the Certificate of Authority, or the equivalent, to transact business in that respective state.

All US domestic corporations, LLCs and companies created by filing with the Secretary of State e.g. registered partnerships, foreign corporations, and LLC's are domestic reporting companies. There are 23 entities exempt from filing the BOI report. *See Chart 2 below.*

There is no filing fee for the BOI. Entities covered by the CTA should proactively ensure compliance with the reporting obligations to avoid potential legal consequences and contribute to a more secure business environment.

What Information Is Collected?

A checklist of information you are required to collect and report is listed below. *See Chart 7 below.* There are special reporting rules. You do not need to report information about a beneficial owner of the reporting company who is a minor child, but you must the parent information. If your company is owned by an exempt entity (*see exempt chart below*) you do not need to report information about any beneficial owner whose ownership interests in a reporting company are hold through one or more entities, *all* of which are themselves exempt from the reporting company definition. *Example:* A large operating company owns 50% of the ownership interests in your company. Individual A owns 50% of the large operating company. You may report the name of the large operating company instead of individual A's personal information. To determine if you are a large operating company, *see the six criteria chart below.*

Enforcement and Compliance

The willful failure to report complete or updated beneficial ownership information to FinCEN, or the willful provision of or attempt to provide false or fraudulent beneficial ownership information may result in a civil or criminal penalties, including civil penalties of up to **\$500 for each day that the violation continues, or criminal penalties including imprisonment for up to two years and/or a fine of up to \$10,000. Senior officers of an entity that fails to file a required BOI report may be held accountable for that failure.**

Providing false or fraudulent beneficial ownership information could include providing false identifying information about an individual identified in a BOI report, such as by providing a copy of a fraudulent identifying document. Additionally, a person may be subject to civil and/or criminal penalties for willfully causing a company not to file a required BOI report or to report incomplete or false beneficial ownership information to FinCEN.

I hope the above summary of this new reporting rule and requirements is helpful to you. Please contact me if you have any questions or would like more information.



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


Chart 3 – Substantial control indicators




SENIOR OFFICER
any individual holding the position or exercising the authority of a:

1. President
2. Chief financial officer (CFO)
3. General counsel (GC)
4. Chief executive officer (CEO)
5. Chief operating officer (COO)

or any other officer, regardless of official title, who performs a similar function as these officers



APPOINTMENT OR REMOVAL AUTHORITY
any individual with the ability to appoint or remove any **SENIOR OFFICER** or a majority of the board of directors or similar body



IMPORTANT DECISION-MAKER
any individual who directs, determines, or has substantial influence over important decisions made by the reporting company, including decisions regarding the reporting company's:

1. **Business**, such as:
 - Nature, scope, and attributes of the business
 - The selection or termination of business lines or ventures, or geographic focus
 - The entry into or termination, or the fulfillment or non-fulfillment, of significant contracts
2. **Finances**, such as:
 - Sale, lease, mortgage, or other transfer of any principal assets
 - Major expenditures or investments, issuances of any equity, incurrence of any significant debt, or approval of the operating budget
 - Compensation schemes and incentive programs for senior officers
3. **Structure**, such as:
 - Reorganization, dissolution, or merger
 - Amendments of any substantial governance documents of the reporting company, including the articles of incorporation or similar formation documents, bylaws, and significant policies or procedures



CATCH-ALL
any other form of substantial control over the reporting company. Control exercised in new and unique ways can still be substantial. For example, flexible corporate structures may have different indicators of control than the indicators included here

Chart 4 – Ownership interests



Substantial control question:	Answer	If response is "Yes":
1. Does your company have a president, chief financial officer, general counsel, chief executive officer, or chief operating officer?	<input type="checkbox"/> Yes <input type="checkbox"/> No	There are senior officers in your company.
2. Does your company have any other officers that perform functions similar to those of a President, chief financial officer, general counsel, chief executive officer, or chief operating officer? <i>Note: One individual may perform one or more functions for a company, or a company may not have an individual who performs any of these functions.</i>	<input type="checkbox"/> Yes <input type="checkbox"/> No	
3. Does your company have a board of directors or similar body AND does any individual have the ability to appoint or remove a majority of that board or body?	<input type="checkbox"/> Yes <input type="checkbox"/> No	There are individuals with appointment or removal authority over your company.
4. Does any individual have the ability to appoint or remove a senior officer of your company?	<input type="checkbox"/> Yes <input type="checkbox"/> No	
5. Does any individual direct, determine, or have substantial influence over important decisions made by your company, including decisions regarding your company's business, finances, or structure? <i>Note: Certain employees who might fit this description are nevertheless exempt from the beneficial owner definition. See section 2.4 for more information.</i>	<input type="checkbox"/> Yes <input type="checkbox"/> No	There are important decision-makers over your company.
6. Are there any other individuals who have substantial control over your company in ways other than those identified in 1-5 above?	<input type="checkbox"/> Yes <input type="checkbox"/> No	There are individuals to whom the catch-all would apply.

Ownership interest question:	Answer	If response is "Yes":
1. Does your company issue equity, stock, or any similar instruments that confer voting power?	<input type="checkbox"/> Yes <input type="checkbox"/> No	Your company has ownership interests that are <i>equity, stock, or voting rights</i> .
2. Does your company issue any pre-organization certificates or subscriptions?	<input type="checkbox"/> Yes <input type="checkbox"/> No	
3. Does your company issue any transferable shares of, or voting trust certificates or certificates of deposit for: • an equity security, • interest in a joint venture, or • certificate of interest in a business trust?	<input type="checkbox"/> Yes <input type="checkbox"/> No	
4. Do individuals hold capital or profit interests in your company (sometimes referred to as "units")?	<input type="checkbox"/> Yes <input type="checkbox"/> No	Your company has ownership interests that are capital or profit interests .
5. Does your company issue any instruments convertible into any share, equity, stock, voting rights, or capital or profit interest? <i>Note: It does not matter whether anything must be paid to exercise the conversion.</i>	<input type="checkbox"/> Yes <input type="checkbox"/> No	Your company has ownership interests that are convertible instruments .
6. Does your company issue any future on any convertible instrument?	<input type="checkbox"/> Yes <input type="checkbox"/> No	
7. Does your company issue any warrant or right to purchase, sell, or subscribe to a share or interest in equity, stock, or voting rights, or capital or profit interests? <i>Note: It does not matter if such warrant or right is a debt.</i>	<input type="checkbox"/> Yes <input type="checkbox"/> No	Your company has ownership interests that are options or privileges .
8. Does your company issue any non-binding put, call, straddle, or other option or privilege of buying or selling equity, stock, or voting rights, capital or profit interest, or convertible instruments? <i>Note: Options or privileges created by others without the knowledge or involvement of your company do not apply.</i>	<input type="checkbox"/> Yes <input type="checkbox"/> No	
9. Does your company have any other instrument, contract, arrangement, understanding, relationship, or mechanism to establish ownership?	<input type="checkbox"/> Yes <input type="checkbox"/> No	The catch-all ownership interest applies to your company.

Chart 7 – Required information checklists

Reporting Company

- Full legal name
- Any trade name or "doing business as" (DBA) name
 - » Report all trade names or DBAs.
- Complete current U.S. address
 - » Report the address of the principal place of business in United States, or, if the reporting company's principal place of business is not in the United States, the primary location in the United States where the company conducts business.
- State, Tribal, or foreign jurisdiction of formation
- For a foreign reporting company only, State or Tribal jurisdiction of first registration
- Internal Revenue Service (IRS) Taxpayer Identification Number (TIN) (including an Employer Identification Number (EIN))
 - » If a foreign reporting company has not been issued a TIN, report a tax identification number issued by a foreign jurisdiction and the name of such jurisdiction.

Each Beneficial Owner and Company Applicant

Not all reporting companies are required to report information about company applicants. See Chapter 3 for assistance in identifying whether your company is required to report company applicant information.

- Full legal name
- Date of birth
- Complete current address
 - » Report the individual's residential street address, except for company applicants who form or register a company in the course of their business, such as paralegals. For such individuals, report the business street address. The address is not required to be in the United States.
- Unique identifying number and issuing jurisdiction from, and image of, one of the following non-expired documents:
 - » U.S. passport
 - » State driver's license
 - » Identification document issued by a state, local government, or tribe
 - » If an individual does not have any of the previous documents, foreign passport

If an individual has obtained a FinCEN identifier and provided it to a reporting company, the reporting company may include such FinCEN identifier in its report instead of the information required about the individual.

Large operating company (Exemption #21)

An entity qualifies for this exemption if all six of the following criteria apply:

1. The entity employs more than 20 full time employees, when applying the meaning of full-time employee provided in 26 CFR 54.4980H-1(a) and 54.4980H-3 . In general, "full-time employee" means, with respect to a calendar month, an employee who is employed an average of at least 30 hours of service per week with an employer.	<input type="checkbox"/> Yes <input type="checkbox"/> No
2. More than 20 full-time employees of the entity are employed in the "United States," as that term is defined in 31 CFR 1010.100(hhh) .	<input type="checkbox"/> Yes <input type="checkbox"/> No
3. The entity has an operating presence at a physical office within the United States. "Operating presence at a physical office within the United States" means that an entity regularly conducts its business at a physical location in the United States that the entity owns or leases and that is physically distinct from the place of business of any other unaffiliated entity.	<input type="checkbox"/> Yes <input type="checkbox"/> No
4. The entity entity 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. If the entity is part of an affiliated group of corporations within the meaning of 26 U.S.C. 1504 , refer to the consolidated return for such group.	<input type="checkbox"/> Yes <input type="checkbox"/> No
5. The entity reported this greater-than-\$5,000,000 amount as gross receipts or sales (net of returns and allowances) on the entity's IRS Form 1120 , consolidated IRS Form 1120 , IRS Form 1120-S , IRS Form 1065 , or other applicable IRS form.	<input type="checkbox"/> Yes <input type="checkbox"/> No
6. When gross receipts or sales from sources outside the United States, as determined under Federal income tax principle, are excluded from the entity's amount of gross receipts or sales, the amount remains greater than \$5,000,000.	<input type="checkbox"/> Yes <input type="checkbox"/> No