

The Corporate Transparency Act: Beneficial Ownership Information Reporting Requirement

Effective January 1, 2024

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On January 1, 2021, Congress enacted the Corporate Transparency Act, pursuant to which the Financial Crimes Enforcement Network ("FinCEN"), a bureau of the U.S. Treasury, has established new rules which require many companies to report certain beneficial ownership information to the federal government beginning on January 1, 2024. Effective January 1, 2026, New York State has also enacted the LLC Transparency Act which imposes similar reporting requirements for limited liability companies.



WHO IS REQUIRED TO REPORT?

- **Reporting Companies:** corporations, limited liability companies, or other similar entities created (or registered to do business) by filing a document with the secretary of state or a similar office.
- **Exempt Entities:** "Large Operating Companies" are a significant group of exempt entities, being companies that:
 - (1) have an operating presence within the U.S.;
 - (2) continuously employ more than 20 employees; and
 - (3) filed a tax return demonstrating more than \$5 million in gross receipts/sales for the immediately preceding tax year.
- **Other Exempt Entities:** largely includes entities within sectors that are already subject to similar regulations (e.g., banks, publicly traded companies, and insurance companies, among others).



WHEN IS THE DEADLINE?

- **Existing Reporting Companies:** Reporting Companies created or registered to do business prior to January 1, 2024, have until January 1, 2025 to file an initial report.
- **New Reporting Companies:** Reporting Companies created or registered to do business between January 1, 2024 and December 31, 2024 must file an initial report within 90 days of creation/registration. Reporting Companies created or registered to do business on or after January 1, 2025 must file within 30 days of creation/registration.
- **Updating Reports:** Any updates and/or corrections to Beneficial Owner information following submission of the initial report must be reported within 30 days.



WHAT HAS TO BE REPORTED?

- **Reporting Companies:** company's full legal name, any trade name(s), business address, jurisdiction of formation, and EIN/TIN.
- **Beneficial Owners:** full legal name, date of birth, residential address, copy of a photo ID and unique identifying number associated with the photo ID.

WHO ARE THE "BENEFICIAL OWNERS"?

There are two tests to determine beneficial ownership status. An individual who satisfies either test will be treated as a Beneficial Owner.

Actual Ownership Test: an individual who directly or indirectly owns 25% or more of the ownership interests in a Reporting Company.

Substantial Control Test: an individual who exercises substantial control over a Reporting Company. This is a more subjective test based on authority, influence and control.

Excluded Individuals: minor children, agents, employees (other than senior officers), inheritors and creditors are excluded from the definition of a Beneficial Owner.

- **Company Applicants:** *only applicable to Reporting Companies formed on or after January 1, 2024; information similar to Beneficial Owners required for individuals who file or are primarily responsible for directing or controlling the filing of a document creating/registering a Reporting Company.*



WHERE DO I REPORT?

- **FinCEN:** the Financial Crimes Enforcement Network bureau of the U.S. Treasury has established and will maintain a Beneficial Ownership Information E-Filing System.
 - Access to information reported is limited; primarily permitted for federal, state and local law enforcement and financial institutions/regulators for due diligence purposes.
 - The E-Filing System can be accessed at www.fincen.gov/boi.



WHY IS THIS REQUIRED?

- **Purpose:** the Corporate Transparency Act is primarily intended to improve oversight and law enforcement capabilities with respect to anonymous shell companies, which Congress believes to be the vehicle of choice for money laundering, terrorism, and other criminal activities.
 - Currently, financial institutions have the burden of collecting beneficial ownership information through the due diligence requirements of the Bank Secrecy Act.
 - The Corporate Transparency Act attempts to shift the collection burden from financial institutions to Reporting Companies.



WHAT IF I DON'T REPORT?

- **Civil Penalties:** up to \$500 per day (and a maximum penalty of \$10,000).
- **Criminal Penalties:** imprisonment for up to 2 years.
- **Safe Harbor:** there is a 90-day safe harbor available for individuals who report incorrect information but correct the reporting within 90 days of filing.



WHAT'S NEXT?

- **New York LLC Transparency Act:** New York State recently enacted the LLC Transparency Act, which imposes similar beneficial ownership information reporting requirements on limited liability companies beginning on January 1, 2026.
- **Customer Due Diligence Rules:** revised customer due diligence rules (primarily affecting financial institutions) will also be implemented by FinCEN in the near future.
- **FinCEN Identification Number:** Beneficial Owners and Company Applicants can now submit their information to FinCEN and obtain an ID number that can be reported in place of the information and documentation otherwise required to be reported.

HOW WE CAN ASSIST WITH COMPLIANCE

- Assess your company to determine reporting requirements and the availability of exemptions.
 - Advise your company on maintaining ongoing compliance obligations.

Alert: FinCEN recently published an alert cautioning that there have been fraudulent attempts to solicit information from individual and entities that may be subject to the Corporate Transparency Act reporting requirements. FinCEN does not send unsolicited requests for information. Please do not respond to any potentially fraudulent messages, click any links or scan any QR codes that are sent to you without first verifying the source of the message.

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