

Introducing the Corporate Transparency Act

If the Feds Don't Know, Now They Know.

31 U.S. § 5336; 31 CFR 1010.380

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Objective and Purpose of the Corporate Transparency Act



Prevent Illicit Activities

The Corporate Transparency Act aims to prevent money laundering, terrorist financing, and other illicit activities that can occur when individuals hide their identities behind anonymous companies.



Make Investigating Companies Easier

Law enforcement agencies will now have a readily available database of pertinent information about a legal entity, the persons behind the entity, and their contact information.

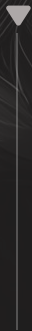
Three Takeaways

- 1** Opportunity for CPAs and lawyers over the next year to engage new clients and re-engage old or current clients in order to comply with law.
- 2** CPAs and lawyers forming legal entities may be responsible for making sure their clients file an accurate report and their involvement will be disclosed as a "company applicant" in the report.
- 3** Failing to comply with the Act can result in significant penalties, including monetary fines and imprisonment.



By the Numbers...

According to FinCen, how many entities are formed in the United States each year?



By the Numbers...

- ▼ According to FinCen, how many entities will need to make a report?

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By the Numbers...

To help put this in perspective:

- There are approximately 1.3 million total lawyers in the United States.

The Extremely Way Too Short Summary of the Act

Starting January 1, 2024, a legal entity must disclose to FinCen certain information about those persons who own 25% or more of that entity or persons that exercise substantial control over that entity (i.e. CEO, CFO, CLO and COO), unless it qualifies for an exemption.

Exempt entities are generally speaking those entities that are already reporting its ownership/responsible persons to the federal government or an entity that employs more than 20 employees on a full-time basis in the US, filed in previous year tax returns demonstrating more than \$5,000,000 in gross receipts or sales, and has an operating presence at a physical office in the U.S.

Penalties for Non-Compliance

Who is responsible?

The Company.

The person causing the willful violation or a senior officer of the reporting company may be held liable.

*This arguably can include the Company Applicant (i.e. company's lawyers or accountants).



Monetary Penalties and Imprisonment

Penalties may consist of (a) a civil penalty of not more than \$500 per day that the violation continues, (b) a fine of not more than \$10,000 *and/or* (c) imprisonment for not more than 2 years.

Curing Inaccurate Information

Inaccurate information may be corrected by submitting a corrected report within 90 days after submitting the inaccurate report, unless the individual submitted the inaccurate report with knowledge of its inaccuracy and does so with the intent of evading reporting requirements.

Literature is calling this a "safe harbor."

Breaking Down the Law - Reporting Companies

Which Companies Must Report?

A "**reporting company**" is defined as a corporation, limited liability company, or other similar entity that is created by filing a document with a secretary of state or similar office under the law of a state, Indian tribe or a foreign country.

What's reported?

- Corporate information;
- Beneficial Owners/Responsible Persons; and
- Company Applicants.

FinCEN's commentary in the first final rule indicates that the filing obligation and certification of accuracy is on the reporting company itself, and the individual submitting the report would be doing so on the reporting company's behalf.

How to Report?

Reporting will be made online at the FinCen website: <https://www.fincen.gov/boi>. The portal for submitting information is still being built, but the proposed form can be found on the website.

Breaking Down the Law - Foreign Companies

Foreign reporting companies are entities (including corporations and limited liability companies) formed under the law of a foreign country that have registered to do business in the United States by the filing of a document with a secretary of state or any similar office.



Breaking Down the Law - Notable Exemptions





Breaking Down the Law - Large Company Exemption

Operating entities that:

1. Employ more than 20 employees on a full-time basis in the U.S.;
2. Filed in previous year tax returns demonstrating more than \$5,000,000 in gross receipts or sales; and
3. Has an operating presence at a physical office in the U.S.

Breaking Down the Law - Subsidiary Exemption

Subsidiaries that are controlled or wholly owned, directly or indirectly, by certain exempt entities

EXEMPT

Partially owned by one or more exempt entities and is also partially owned by one or more non-exempt entities

NOT EXEMPT

Report up to Exempt Entity



Breaking Down the Law - Accounting Firm exemption

Any public accounting firm registered in accordance with section 102 of the Sarbanes-Oxley Act of 2002.

The Sarbanes-Oxley Act requires public accounting firms to register with the Public Company Accounting Oversight Board (PCAOB) to prepare or issue an audit report for a U.S. public company or a broker-dealer, or to play a substantial role in those audits.

Thus, not all accounting firms are exempt companies, and may need to file a BOI report if they don't qualify for another exemption.




Breaking Down the Law - Inactive Entity Exemption

This exemption applies to any entity that (i) existed on or before January 1, 2020, (ii) is not engaged in active business, (iii) is not owned by a foreign individual, (iv) has not been involved in a change of ownership within the last year, (v) has not sent or received money in an amount greater than US\$1,000 in the last year **and** (vi) does not otherwise have any assets in the United States or abroad.

Breaking Down the Law - Defining Beneficial Owner

Beneficial Owner - any individual who, directly or indirectly (a) exercises "substantial control" over the entity; or (b) owns or controls not less than 25 percent of the ownership interests of the entity.



Breaking Down the Law - Defining Beneficial Owner - 25% Ownership Interest

The regulations make specific point to say that "ownership interest" means all types of equity or quasi-equity, including:

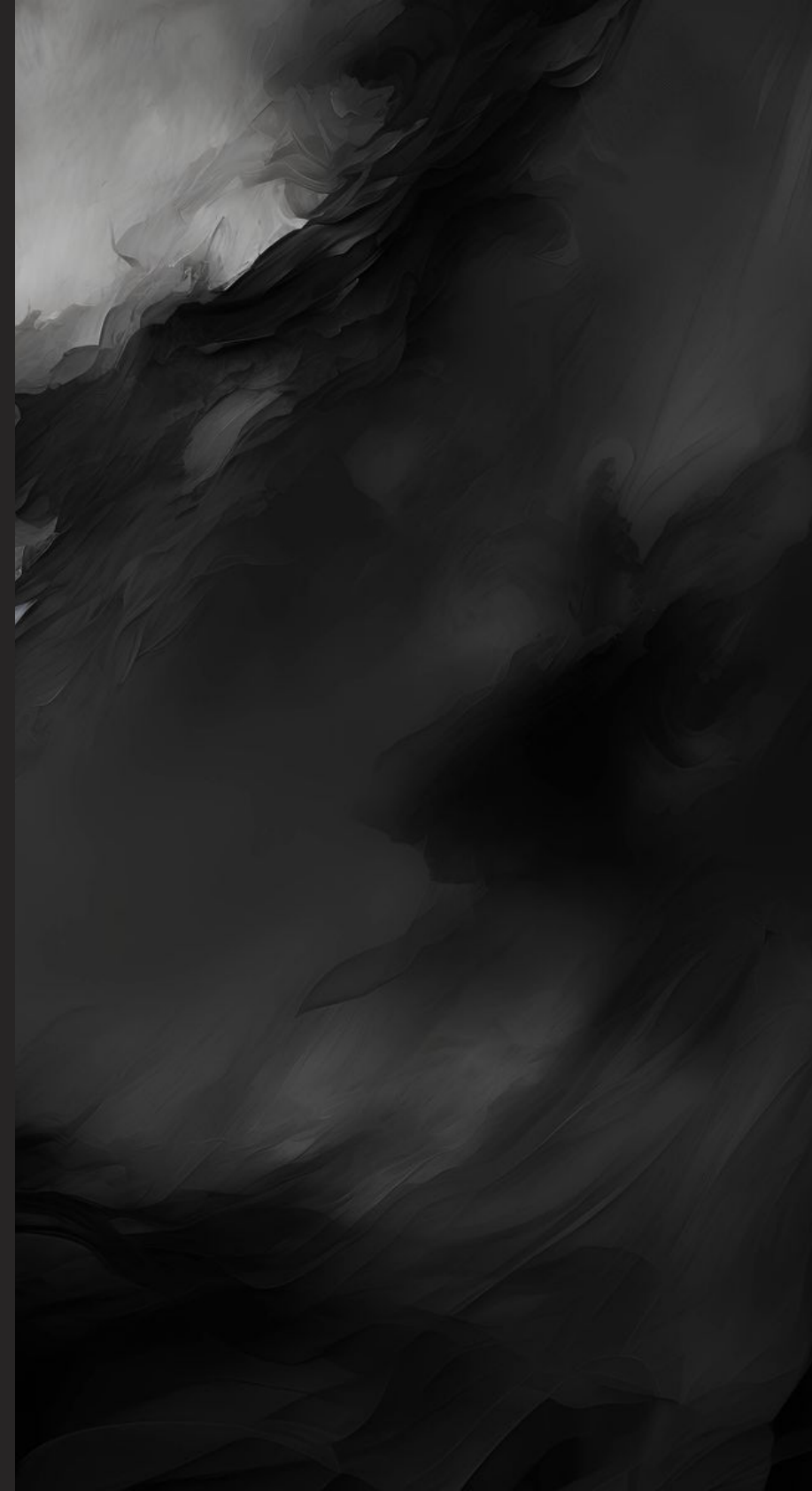
- convertible instruments;
- profits interests;
- put, call, straddle or other option; or
- any other instrument, contract, arrangement, understanding, relationship, or mechanism used to establish ownership.

Generally speaking, the calculation should be made on a fully diluted basis. The regulations provide some specific formulas. But, in short, the regulations indicate, when in doubt, if the facts and circumstances indicate who owns/controls more than 25% of the company, you should disclose this person as a beneficial owner.

Breaking Down the Law - Substantial Control

"Substantial Control" is defined as:

- Service as a senior officer of a reporting company (president, chief financial officer, general counsel, chief executive officer, chief operating officer, or any other officer, regardless of official title, who performs a similar function);
- Authority over the appointment or removal of any senior officer or a majority of the board of directors (or similar body) of a reporting company;
- Having direction, determination, or decision of, or substantial influence over, important matters of a reporting company; or
- Any other form of substantial control over the reporting company not specifically listed.





FinCEN Identifier

A FinCEN ID is a unique identifying number issued to an individual by FinCEN. Although there is no requirement to obtain a FinCEN ID, doing so can simplify the reporting process.

An individual beneficial owner or company applicant's FinCEN ID can be reported instead of required information about that individual on the reporting company's Beneficial Ownership Information Report (BOIR) submitted to FinCEN.

Any individual can obtain a FinCEN ID through the FinCEN website.

Breaking Down the Law - Reporting Requirements

Each reporting company is required to submit a report to FinCEN that discloses the following:

- ☐ Full legal name and DBA names of the reporting company;
- ☐ Address of principal place of business;
- ☐ Jurisdiction of formation; and
- ☐ EIN.

Each beneficial owner and each company applicant has to disclose the following:

- ☐ Full Legal Name;
- ☐ Date of Birth;
- ☐ Current Residential Address (or business address if company applicant is an entity); and
- ☐ Unique identifying number from a passport, government identification document or a driver's license (along with a scanned image of such document).

Filing Information

1. * Type of filing:

- a. Initial report ☐
- b. Correct prior report ☐
- c. Update prior report ☐
- d. Newly exempt entity ☐

Reporting Company information associated with most recent report, if any:

- e. Legal name
- f. Tax Identification type
- g. Tax Identification number
- h. Country/Jurisdiction (if foreign tax ID only)

2. Date prepared (auto-filled when form is finalized)

Beneficial Ownership Information Report

[Home](#)[Reporting Company](#)[Company Applicant\(s\)](#)[Beneficial Owner\(s\)](#)

Part I. Reporting Company Information

3. Request to receive FinCEN Identifier (FinCEN ID) ☐

4. Foreign pooled investment vehicle ☐

Full legal name and alternate name(s):

5. * Reporting Company legal name

6. Alternate name (e.g. trade name, DBA)

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Form of identification:

7. * Tax Identification type

8. * Tax Identification number

9. Country/Jurisdiction (if foreign tax ID only)

Jurisdiction of formation or first registration:

10. * a. Country/Jurisdiction of formation

Domestic Reporting Company:

b. State of formation

c. Tribal jurisdiction of formation

d. Name of the other Tribe

Foreign Reporting Company:

e. State of first registration

f. Tribal jurisdiction of first registration

g. Name of the other Tribe

Current U.S. Address:

11. * Address (number, street, and apt. or suite no.)

12. * City

13. * U.S. or U.S. Territory

14. * State

15. * ZIP Code

Beneficial Ownership Information Report

Home

Reporting Company

Company Applicant(s)

Beneficial Owner(s)

16. Existing Reporting Company

☐

(check if Reporting Company was created or registered before January 1, 2024)

17. (This item is reserved for future use)

Part II. Company Applicant Information

1 of 1

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Company Applicant FinCEN ID:

18. FinCEN ID

Full legal name and date of birth:

19. Individual's last name

20. First name

21. Middle name

22. Suffix

23. Date of birth

Current address:

24. Address type

☐ a. Business address ☐ b. Residential address

25. Address (number, street, and apt. or suite no.)

26. City

27. Country/Jurisdiction

28. State

29. ZIP/Foreign postal code

Form of identification and issuing jurisdiction:

30. Identifying document type

31. Identifying document number

32. Identifying document issuing jurisdiction:

a. Country/Jurisdiction

b. State

c. Local/Tribal

d. Other local/Tribal description

33. Identifying document image

Add Attachment

Remove Attachment

Beneficial Ownership Information Report

[Home](#)[Reporting Company](#)[Company Applicant\(s\)](#)[Beneficial Owner\(s\)](#)

34. *(This item is reserved for future use)*

Part III. Beneficial Owner Information

1 of 1

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35. Parent/Guardian information instead of minor child ☐ *(check if the Beneficial Owner is a minor child and the parent/guardian information is provided instead)*

Beneficial Owner FinCEN ID:

36. FinCEN ID

Exempt entity:

37. Exempt entity ☐

Full legal name and date of birth:

38. * Individual's last name or entity's legal name.

39. * First name

40. Middle name

41. Suffix

42. * Date of birth

Residential address:

43. * Address (number, street, and apt. or suite no.)

44. * City

45. * Country/Jurisdiction

46. * State

47. * ZIP/Foreign postal code

Form of identification and issuing jurisdiction:

48. * Identifying document type

49. * Identifying document number

50. * Identifying document issuing jurisdiction:

a. Country/Jurisdiction

b. State

c. Local/Tribal

d. Other local/Tribal description

51. * Identifying document image

Add Attachment

Remove Attachment




Breaking Down the Law - Deadlines and Updates

- 90 days to file report after SOS confirms entity is formed, for any company formed during 2024. For companies formed on or after January 1, 2025, will only have 30 days to complete the report.
- If **any** changes, Company has 30 days to update report (transfers, M&A, death, etc.).
- Companies formed prior to January 1, 2024, have one year to comply (i.e. 12/31/24).

Breaking Down the Law - Company Applicants

Skills of the lawyer/CPA of the future...



 YouTube



Tricking a Federal Agent SCENE - The Firm MOVIE (1993)...

Mitch (Tom Cruise) gains the upper hand when he records Agent Terrance (Ed Harris) threatening him and abusing his power. TM & ©...



Breaking Down the Law – Company Applicants

→ If you assist a client in forming an entity, you are a Company Applicant

A "Company Applicant" is an individual who files an application/document to form an entity. In the reporting form, you can list up to two Company Applicants. Entities formed prior to January 1, 2024, won't have a Company Applicant.

"In many cases, company applicants may be employed by a business formation service or law firm. For example, there may be an attorney primarily responsible for overseeing the preparation and filing of incorporation documents and a paralegal who directly files them with a state office to create the reporting company. In this example, this reporting company would report two company applicants—the attorney and the paralegal—but additional individuals who may be indirectly involved in the filing would not need to be reported."

Who will have access to this information?

BOI is generally confidential and may not be disclosed except as authorized under the CTA and the Final Access Rule.

Under the Final Access Rule, the CTA provides access to BOI to if they meet specific requirements:

1. Federal agencies engaged in national security, intelligence, or law enforcement activity
2. State, local, and Tribal law enforcement agencies with court authorization
3. Foreign law enforcement agencies, judges, prosecutors, and other authorities that meet specific criteria
4. Financial institutions with customer due diligence requirements and regulators supervising those financial institutions, and
5. Certain US Treasury Department officers and employees.



Practical Considerations

Be Prepared Before Filing

Collect all the information you need from the client before filing to open an entity with a Secretary of State. Do not file and then have the client disappear.

Be Prepared for the Next Year

Tens of millions of companies will not only need to file, but they'll likely need to update their minute books so what is filed matches company records. Consider when the right time will be to file for existing entities.

Be Careful Who You Associate Yourself With

Law enforcement (fed, state and local) and financial institutions will have access to these databases. More than ever, client should be careful who they do business with.

Every Entity Needs Review

Each entity will need to report, unless they qualify for an exemption. So each entity in a corporate structure needs to be analyzed.

Confidentiality Clauses

Companies will need to check if confidentiality clauses in governing documents may prohibit reporting, and obtain consent.

Always Be Prepared to Update

If anything makes the report non-compliant, the needs to be updated. Even simple things like addresses.

Is the Stock Deal Dead?

Considering that CTA liability is with the company, should we be advising our buyer-clients in M&A deals not to purchase the equity of a company anymore?

Thank You for Attending

