

## Corporate Transparency Act — Beneficial Ownership Information Reporting Requirement Information

### What entities are required to comply with the CTA's BOI reporting requirement?

Entities organized both in the U.S. and outside the U.S. may be subject to the CTA's reporting requirements. Domestic companies required to file a report include corporations, limited liability companies (LLCs) or any similar entity created by the filing of a document with a secretary of state or any similar office under the law of a state or Indian tribe.

Domestic entities that are not created by the filing of a document with a secretary of state or similar office are **not** required to report under the CTA.

Foreign companies required to report under the CTA include corporations, LLCs or any similar entities that are formed under the law of a foreign country and registered to do business in any state or tribal jurisdiction by filing a document with a secretary of state or any similar office.

The Financial Crimes Enforcement Network ("FinCEN") created a helpful tool called the "Small Entity Compliance Guide" to assist entities in identifying whether they need to comply with the BOI Reporting Rule. To access the Small Entity Compliance Guide, visit [www.fincen.gov/boi/small-entity-compliance-guide](http://www.fincen.gov/boi/small-entity-compliance-guide).

### Are there any exemptions from the filing requirements?

There are 23 categories of exemptions. Included in the exemptions list are publicly traded companies, banks and credit unions, securities brokers/dealers, public accounting firms, tax-exempt entities and certain inactive entities, among others. Please note these are not blanket exemptions and many of these entities are already heavily regulated by the government and thus already disclose their BOI to a government authority.

In addition, certain "large operating entities" are exempt from filing. To qualify for this exemption, the company must:

- a) employ more than 20 people in the U.S. full-time;
- b) have reported gross revenue (or sales) of over \$5M on the prior year's tax return; and
- c) be physically present in the U.S.

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## Who is a beneficial owner?

Any individual who, directly or indirectly, either:

- Exercises “substantial control” over a reporting company, or
- Owns or controls at least 25 percent of the ownership interests of a reporting company.

An individual has substantial control of a reporting company if they direct, determine or exercise substantial influence over important decisions of the reporting company. This includes any senior officers of the reporting company, regardless of formal title or if they have no ownership interest in the reporting company.

The detailed CTA regulations define the terms "substantial control" and "ownership interest" further.

## What sort of information is required to be reported?

Reporting companies must report the following information about the entity:

1. full name of the reporting company,
2. any trade name or doing business as (DBA) name,
3. business address,
4. state or Tribal jurisdiction of formation, and
5. IRS taxpayer identification number (TIN).

In addition, the company must report the following information about **each** of the entity’s beneficial owners:

1. full legal name,
2. birthdate,
3. address, and
4. unique identifying number and issuing jurisdiction from an acceptable identification document (e.g., a non-expired driver’s license or passport) **and** an image of such a document.

For newly created entities (entities created in 2024 and later), the information above is also required to be reported for company applicants. A company applicant is an individual who directly files or is primarily responsible for the filing of the document that creates or registers the company.

## When must companies file and is it an annual filing?

An initial filing is required in 2024 with different due dates depending on when an entity was/is formed. In addition to the initial reporting, companies have an obligation to file updated reports whenever there are changes to the information previously reported. Examples of reportable changes may include changes to the company information, such as registering a new DBA of the company; a death of a beneficial owner resulting in a change to the reporting company’s beneficial owners; beneficial owners that were previously exempt as minors coming of

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age; and any changes to a beneficial owner's name, address, or unique identifying number. Note: if a beneficial owner obtained a new driver's license or other identifying document that includes the changed name, address, or identifying number, the company is required to submit an image of the updated identifying document with the updated BOI report. There is no annual reporting requirement.

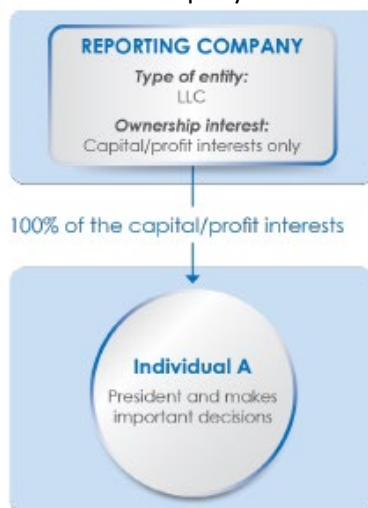
There are different filing timeframes depending on when an entity is registered/formed or if there is a change to the company or beneficial owner's information.

- New entities (created/registered in 2024) — must file within 90 days of registration/creation
- New entities (created/registered after 12/31/2024) — must file within 30 days of registration/creation
- Existing entities (created/registered before 1/1/24) — must file by **1/1/25**
- Reporting companies with **updates and/or corrections to previously reported information** — must file within 30 days after the date on which a change occurred or when the inaccuracy was identified

### Does my single-member LLC have a filing requirement?

It depends. A domestic single-member LLC that was created by the filing of a document with a secretary of state or similar office is a reporting entity, unless an exemption applies. FinCEN's Small Entity Compliance Guide includes the following example of a reporting company that is a single-member LLC with one beneficial owner:

Example 1: The reporting company is a limited liability company (LLC). Individual A is the sole owner and president of the company and makes important decisions for the company. No one else owns or controls ownership interests in the company or exercises substantial control over the company.



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Individual A is a beneficial owner of the reporting company in two different ways, assuming no other facts. First, Individual A exercises substantial control over the company because Individual A is a senior officer of the company (the president). Second, Individual A is also a beneficial owner because Individual A owns 25 percent or more of the reporting company's ownership interests. Because no one else owns or controls ownership interests in the LLC or exercises substantial control over it, and assuming there are no other relevant facts, Individual A is the only beneficial owner of this reporting company, and Individual A's information must be reported to FinCEN along with the company's information.

### **How does my company file a BOI report and is there a fee to file?**

If your company is required to file a BOI report, you must do so electronically through a secure filing system available via FinCEN's BOI E-Filing website. Visit [www.fincen.gov/boi](http://www.fincen.gov/boi) to navigate to the e-filing website. There is no fee for submitting your beneficial ownership information report to FinCEN.

### **Risk of non-compliance**

Penalties for willfully not complying with the BOI reporting requirement can result in **criminal and civil penalties of \$591 per day and up to \$10,000 with up to two years of imprisonment**. For more information about the CTA, visit [fincen.gov/boi-faqs](http://fincen.gov/boi-faqs).

There is uncertainty whether providing technical or interpretive advice on the CTA may rise to the practice of law. As such, if there is ambiguity on how or what to report, we recommend that you seek advice from an attorney who has experience and expertise in this field to help you decide how to proceed.

### **Small Business Community Opposition to the CTA**

The CTA and its implementation have been met with opposition from the small business community. On March 1, 2024, in the *NSBA v. Yellen* court case, a federal district court in the Northern District of Alabama ruled that the CTA was unconstitutional and was not enforceable against the plaintiffs (and plaintiffs only). The Justice Department, on behalf of the Department of Treasury, filed a Notice of Appeal on March 11, 2024. On April 3rd of this year, the AICPA along with all state CPA societies wrote a letter to U.S. Treasury Secretary Yellen and FinCEN Director Gacki imploring a suspension of all FinCEN enforcement actions until one year after the conclusion of all court cases related to *NSBA v. Yellen*. In response to the growing opposition and confusion related to the CTA, the House Committee on Small Business held a full committee hearing on April 30th examining how the FinCEN implementation of the CTA has impacted small businesses. On the same day, house bill H.R. 8147 was introduced to repeal the CTA. This bill has not moved passed the house yet, and given this is an election year, it's not likely that it will gain any momentum. Secretary Yellen and Director Gacki have not replied to the AICPA letter. Thus, the CTA is currently enforceable by FinCEN.

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## Summary

For entities created/registered before 1/1/24 – don't panic – you have until 1/1/25 to file your BOI report (*if your entity is subject to the reporting requirements*). If you are considering creating/registering an entity in 2024, consult with your attorney about BOI information that your entity may be required to report to FinCEN. Lastly, note that the CTA is new and additional guidance and interpretation may be issued in the future which may impact reporting requirements.

*Please note that this information is meant to be general-only and should not be applied to your specific facts and circumstances without consultation with competent legal counsel and/or other retained professional advisers.*

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