
SingleFile

Corporate Transparency Act: An Overview

March 22, 2023



Background

- Corporate Transparency Act was enacted January 1, 2021
- Objective: to identify bad actors who are hiding behind legal entities to conduct illegal business, e.g., money laundering
- Requirement: Reporting Companies must file Beneficial Ownership Interest (“BOI”) with FinCen, a division of the US Treasury Department
 - Impacts mostly small businesses
 - Large businesses and already regulated businesses are excluded
- BOI includes Personally Identifying Information (“PII”)
- Access to Data: maintained in restricted data with access limited to a small group of law enforcement and anti-fraud authorities

Background

- Regulatory timeline
 - Final rule was issued September 29, 2022
 - Effective date is January 1, 2024
 - Two more rules are pending
 - Who has access to data
 - Amending financial due diligence rules on financial industry
- Volume
 - 36M filers expected in the first year
 - 5M expected to file updates annually
 - 2M new entities created each year

Which companies?

1. Domestic Reporting Companies - entities created by filing with a state Secretary of State such as corporations and LLCs
 - FinCen expects: LLP, LLLP, ST, BT, most LPs
 - FinCen doesn't expect: SPs (sole proprietorship), GPs, trusts
2. Foreign Reporting Companies - entities formed under foreign law and registered in US state to do business
3. Exemptions
 - Regulated entities - 34 Act issuers, banks, credit unions, entities registered with SEC, insurance companies, insurance producers, public accounting firms, tax exempt entities, inactive companies, others
 - Large Operating Companies
 - 20+ employees AND
 - \$5M+ gross receipts on US sales AND
 - Physical office in the US

What Information is Required?

Information on Company	Beneficial Owner Information	Company Applicants*
<ul style="list-style-type: none">• full legal name of company• any trade or dba names• current street address of PPB (principal place of business)• TIN• state of formation	<ul style="list-style-type: none">• full legal name• date of birth• residential street address• identification number, issuing jurisdiction & image of document<ul style="list-style-type: none">○ passport○ state ID○ driver's license	<ul style="list-style-type: none">• full legal name• date of birth• residential street <i>or business</i> address• identification number, issuing jurisdiction & image of document<ul style="list-style-type: none">○ passport○ state ID○ driver's license

*For entities formed on or after January 1, 2024

Who is a Beneficial Owner?

- A Beneficial Owner
 - Exercises substantial control over a Reporting Company OR
 - Owns or controls at least 25% of ownership interest in the Reporting Company
- Control or ownership may be direct or indirect
- Persons with Substantial Control are individuals who direct key actions
 - Senior officers such as CEO, President, CFO, COO, GC
 - Persons who can remove senior officers or majority of the board
 - Persons who direct, control or influence important decisions such as sale, lease or mortgage of principal assets, major expenditures, acquisition or elimination of business line, compensation for senior officers, entering or terminating key contracts, amendment of corporate governance documents, reorganization, merger or dissolution
- Ownership Interest includes
 - Equity, stock and similar instruments
 - Capital or profits interests
 - Convertible instruments
 - Puts, calls, options
 - Any agreement, relationship, mechanism establishing ownership

When?

Initial Filing

- Business created *before January 1, 2024*
 - Must file by January 1, 2025
- Businesses created *on or after January 1, 2024*
 - Must file within 30 days of formation
- Businesses that lose exemption
 - Must file with 30 days of losing exemption

Updates

- Within 30 days of becoming aware of a Change/mistake
- What constitutes a Change?
 - change in information for company or beneficial owner
 - if a company becomes exempt
 - doesn't include changes to company applicant

Who is a Company Applicant?

- Directly files document creating the company
- Directs or controls the filing of the document creating the company
- Could be one or two individuals

What happens for failure to comply?

Fines: up to \$10,000 and two years in jail

Civil Penalties: up to \$500 per day of noncompliance

- Possible liability for individual causing failure to comply
- Applies to Reporting Company and Beneficial Owners