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SingleFile

# Corporate Transparency Act: An Overview

March 22, 2023



# What is the CTA?

- 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

# There's more?

- 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
- FinCen is anti-money laundering & counter-terrorism division of US Treasury
  - Administer number of online reporting

# Which companies are affected?

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

# Which companies are exempted?

1. Securities Reporting Issuer
2. Governmental Authority
3. Bank
4. Credit Union
5. Bank Holding Company
6. Money Services
7. Securities Broker or Dealer.
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. Licensed Insurance Producer
14. Commodity Exchange Act Registered Entity
15. Public Accounting Firm
16. Public Utility
17. Financial Market Utility
18. Pooled Investment Vehicle
19. Tax Exempt Entity
20. Assisting a Tax Exempt Entity
21. Large Operating Company
22. Subsidiary of 1-15, 17-19 or 21
23. Inactive Entity

# Which information is required?

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

\*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

# Who is a Company Applicant?

- Directly files document creating the company
  - Founder
  - Law firm
  - Service company if there's an individual involved (vs. software)
- Directs or controls the filing of the document creating the company
- Could be one or two individuals



# What's a FinCen Identifier?

- Beneficial Owner or Company Applicant may establish a unique identifier with FinCen by providing BOI directly to FinCen and establish an account
- For future FinCen filings, the individual can use the FinCen identifier
- Note this is a separate filing and it looks like it needs to be completed before making a company report

# When does this need to happen?

## 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

# What happens if you don't play along?

**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