



# Bell · Davis · Pitt

Attorneys and Counselors at Law

## OVERVIEW OF CORPORATE TRANSPARENCY ACT REPORTING REQUIREMENTS

### I. Background

In 2021, Congress passed the Corporate Transparency Act (the “CTA”). The CTA is the result of many years of efforts by Congress, the Treasury, national security agencies, and law enforcement to put in place rules to ensure corporate transparency and stop money-laundering, terrorism, the proliferation of weapons of mass destruction, and other illicit activities. The CTA requires certain types of US and foreign entities to report information about their beneficial owners to the U.S. Treasury’s Financial Crimes Enforcement Network (FinCEN).

Following enactment of the CTA in 2021, on September 29, 2022, FinCEN issued a Final Rule establishing the beneficial ownership information reporting requirements as mandated by the Corporate Transparency Act. The Final Rule took effect on January 1, 2024.

### II. Quick Overview of the Reporting Requirements of the CTA and the Final Rule

#### 1. Application of Final Rule – Who is Affected?

The Final Rule requires certain entities (“**Reporting Companies**”) to file beneficial owner information reports (“**BOI Reports**”) with FinCEN that provide two categories of information: (i) the identity of all **Beneficial Owners** of the company, and (ii) the identity of all individuals who participated in filing an application with specified governmental authorities to create the entity or register it to do business (“**Company Applicants**”).

- “**Reporting Company**” means any company that is (a) a corporation; (b) a limited liability company; or (c) created by the filing of a document with a secretary of state.
- A Reporting Company can be a domestic or foreign entity.
- CTA regulations are aimed primarily at smaller, lightly regulated companies. Exceptions are made for larger companies. Exceptions include:
  - banks;
  - credit unions;
  - depository institution holding companies;

- insurance companies;
- accounting firms;
- public utilities;
- tax-exempt entities;
- charitable trusts;
- inactive entities; and
- large operating companies;
  - A “large operating company”
    - employs more than 20 full-time employees in the US;
    - has an operating presence at a physical office in the US; and
    - has filed a federal tax return showing more than \$5 million in gross receipts or sales in the previous year.

There are 23 total exceptions listed in the Final Rule. See the Small Entity Compliance Guide published by FinCEN for more information on Reporting Company exceptions. The link to the Small Entity Compliance Guide is provided at the end of this document.

- A “**Company Applicant**” is (1) the individual who directly files the document that creates the company; and (2) the individual who is primarily responsible for directing or controlling such filing if more than one individual is involved in the filing of the document.

## 2. **What information must the Initial BOI Report contain?**

For the **Reporting Company**:

- Full legal name;
- Any trade name or d/b/a name;
- A complete current address which must be the principal place of administration for a business in the US. [If the business is a non-US business, the address must be the primary location in the US where the business will be conducted];
- State or foreign jurisdiction of formation of the Reporting Company;
- The EIN/TIN of the Reporting Company.

For every **beneficial owner** and **company applicant**:

- Full legal name;

- Date of birth;
- Complete current address consisting of:
  - In the case of a company applicant who forms or registers an entity in the course of such company applicant’s business, the street address of such business; or
  - In any other case, the individual’s residential street address;
- A unique identifying number and the issuing jurisdiction from one of the following documents:
  - A non-expired passport issued to the individual by the US government;
  - A non-expired identification document issued to the individual by a State, local government, or Indian Tribe for the purpose of identifying the individual;
  - A non-expired driver’s license issued to the individual by a State; or
  - A non-expired passport issued by a foreign government to the individual, if the individual does not possess any of the documents described above in this section;
- An image of the document from which the unique identifying number was obtained;
- Note: Reporting Companies, Company Applicants, and Beneficial Owner can each submit an application with the identification information listed above in order to obtain a FinCEN identifier (“FinCEN ID”). If a FinCEN ID is obtained, a Reporting Company may include such FinCEN ID in the BOI Report in lieu of the actual identifying information that would otherwise be required.

### **3. Who is a Beneficial Owner?**

“Beneficial Owner” means any individual who, directly or indirectly, either exercises substantial control over a Reporting Company, or owns at least 25% of the ownership interests of such Reporting Company.

- Substantial control is defined as an individual who:
  - Serves as a senior officer [e.g. President, CEO, CFO, COO, General Counsel, or any other officer who performs a similar function];
  - Has authority over the appointment or removal of any senior officer or a majority of the board;
  - Directs or has substantial influence over important decisions made by the Reporting Company (includes decisions related to nature, scope and attributes of the business of the company, dissolution, merger, reorganization, major expenditures or investments, etc.); or

- Possesses any other form of substantial control.
- “Any individual who directly or indirectly owns or controls at least 25% of the ownership interests in a Reporting Company.”
  - This definition includes capital or profits interests, put call straddles, etc. in calculating ownership percentages.
  - An individual can directly or indirectly own a company through any contract, relationship, etc. including joint ownership; through another individual acting as a nominee or agent; through a trust or similar arrangement that holds such ownership interest, in either the role
    - (i) as trustee of a trust or other individual with the authority to dispose of trust assets;
    - (ii) as a beneficiary who is the sole permissible recipient of income and principal from the trust or who has the right to demand a distribution of or withdraw substantially all of the assets from the trust; or
    - (iii) as a grantor who has the right to revoke the trust.
- Note: An individual can indirectly own or control 25% of a Reporting Company through ownership or control of one or more intermediary entities, or ownership or control of the ownership interests of any such entities, that separately or collectively own or control ownership interests of the Reporting Company.
- Exceptions—there are five exceptions to the definition of beneficial owner. The following individuals are not considered to be beneficial owners:
  - Minor children (but only while minors);
  - Individuals acting as a nominee, custodian or agent for another individual;
  - Employees of Reporting Companies;
  - An individual whose only interest in a Reporting Company is a future interest through right of inheritance; and
  - A creditor of a Reporting Company.

### **III. Effective Date of Reporting Requirements**

- The Final Rule took effect on January 1, 2024.
- For companies in existence prior to January 1, 2024, the initial BOI Report must be filed by January 1, 2025.
- Any Reporting Company created January 1, 2024 – December 31, 2024, is required to file the initial BOI Report within 90 calendar days of creation.

- Any Reporting Company created on or after January 1, 2025, is required to file the initial BOI Report within 30 calendar days of creation.
- If a company initially was exempt from the reporting requirements, but subsequently loses that exemption—the company has 30 days to file the initial BOI Report.
- Exception as to information required to be reported: for companies in existence before January 1, 2024, Company Applicant information doesn't need to be reported.

#### **IV. Requirement to Update Initial Report Information**

- If there is any change with respect to required information previously submitted to FinCEN concerning a Reporting Company or its Beneficial Owners, including any change with respect to who is a Beneficial Owner or information reported for any particular Beneficial Owner, the Reporting Company shall file an updated report within 30 calendar days after the date on which such change occurs.
- If a Reporting Company meets the criteria for exemption subsequent to the filing of an initial BOI Report, this change will be deemed a change with respect to information previously submitted to FinCEN, and the entity shall file an updated report.
- If an individual acquires an interest in a Reporting Company and that individual satisfies the Beneficial Owner definition, the entity shall file an updated report.
- Other events that constitute a change that would trigger an additional reporting requirement include:
  - The death of a Beneficial Owner;
  - When a minor attains age of majority;
  - When information that is contained on an ID document that was required to be provided to FinCEN changes
    - If the person's name on the ID document changes, an update is required.
    - If the person's address or ID number changes, an update is required.

#### **V. FinCEN ID**

- An individual may obtain a FinCEN ID by submitting to FinCEN an application containing the information about the individual that would otherwise need to be reported on the BOI Report [name, birthdate, address, unique identifying number from an acceptable identification document, and the image of such document].
- A Reporting Company may obtain a FinCEN ID by submitting to FinCEN an application at or after the time that the entity submits an initial BOI Report.

- Each FinCEN ID shall be unique to each such individual or Reporting Company, and each such individual or Reporting Company may obtain only one FinCEN ID.
- If an individual has obtained a FinCEN ID and provided such FinCEN ID to a Reporting Company, the Reporting Company may include such FinCEN ID in its report in lieu of the personal information that would otherwise be required.
- An individual that has obtained a FinCEN ID shall file an updated or corrected application to update information previously submitted to FinCEN on a prior application due to change or error within 30 days of the change or becoming aware of the inaccuracy.
- Any Reporting Company that has obtained a FinCEN ID shall file an updated or corrected application to update any information previously submitted to FinCEN on a prior application within 30 calendar days of becoming aware of an inaccuracy.

**Alert:** FinCEN has been notified of recent fraudulent attempts to solicit information from individuals and entities who may be subject to reporting requirements under the CTA. The fraudulent correspondence may be titled “Important Compliance Notice” and asks the recipient to click on a URL or to scan a QR code. Those e-mails or letters are fraudulent. FinCEN does not send unsolicited requests. Please do not respond to these fraudulent messages or click on any links or scan any QR codes within them.

### **Helpful Links:**

FinCEN Website: <https://www.fincen.gov>

FinCEN’s Small Entity Compliance Guide:

[https://www.fincen.gov/sites/default/files/shared/BOI\\_Small\\_Compliance\\_Guide\\_FINAL\\_Sept\\_508C.pdf](https://www.fincen.gov/sites/default/files/shared/BOI_Small_Compliance_Guide_FINAL_Sept_508C.pdf)

FinCEN Frequently Asked Questions: <https://www.fincen.gov/frequently-asked-questions>

***If you have questions about CTA compliance, please contact your Bell, Davis & Pitt attorney. If you have not requested your Bell, Davis & Pitt attorney to assist you with CTA compliance, it will be assumed that you understand your CTA reporting obligations and will handle your own reporting.***

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