

Beneficial Ownership Information (BOI) Reporting Rules under Corporate Transparency Act (CTA)

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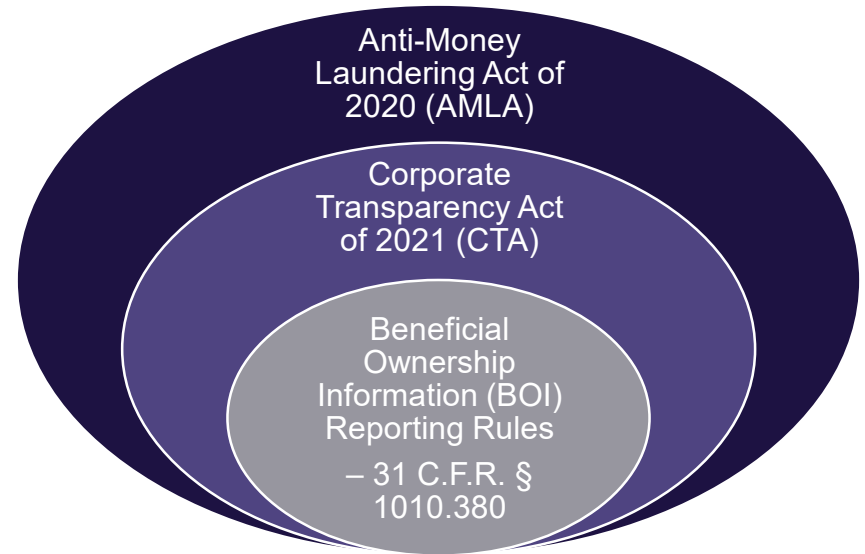


Agenda

- Background of CTA
- Who Needs to Report?
- Reporting Requirements for Initial Reports
- Reporting Deadlines
- Additional Reporting Considerations
- Resources

Background of CTA

- The Anti-Money Laundering Act of 2020 (“AMLA”) established the Corporate Transparency Act (“CTA”), which requires the Financial Crimes Enforcement Network (“FinCEN”) to establish and maintain a national registry of beneficial owners of entities that are considered to be reporting companies.
- On September 29, 2022, the FinCEN issued a final rule (the “Rule”, see [31 C.F.R. § 1010.380](#)), the first of three planned rulemakings implementing the beneficial ownership information (“BOI”) reporting rules of the CTA. The Rule will take effect on **January 1, 2024**.



Background of CTA (cont.)

- The CTA and the Rule aim to fight corruption, increase transparency, protect national security, and prevent “drug traffickers, fraudsters, corrupt actors such as oligarchs, and proliferators from laundering or hiding money and other assets in the United States” from using shell and front companies. See 87 Fed. Reg. [59498](#), 59596.
- BOI will be collected through and stored in a private database, Beneficial Ownership Secure System (“BOSS”).



Who Needs to Report?

All reporting companies (domestic or foreign) unless one of the 23 exemptions applies.

Who Needs to Report? Reporting Companies

Domestic Reporting Companies

- Corporation, LLC or other entity **created** by filling a document with a secretary of state (“SOS”) or any similar office under the law of a State or Indian tribe.

See [31 C.F.R. § 1010.380\(c\)\(1\)\(i\)](#) [annotated]

Foreign Reporting Companies

- Corporation, LLC or other entity formed under the law of a foreign country and **registered to do business** in the U.S. by filling document with a SOS or any similar office under the law of a State or Indian tribe.

See [31 C.F.R. § 1010.380\(c\)\(1\)\(ii\)](#) [annotated]

What are “other entities” FinCEN expects?

- Including: LLP, LLLPs, STs, BTs and most LPs
- Excluding: SPs, GPs, trusts

Who Needs Not to Report? 23 Exemptions

1. Securities Reporting Issuer.
2. Governmental Authority.
3. Bank.
4. Credit Union.
5. Depository Institution Holding Company.
6. Money Service Business.*
7. Broker or Dealer in Securities.
8. Securities Exchange or Clearing Agency.
9. Other Exchange Act Registered Entity.
10. Investment Company or Investment Advisor.
11. Venture Capital Fund Adviser.
12. Insurance Company.
13. State-Licensed Insurance Producer.
14. Commodity Exchange Act Registered Entity.
15. Accounting Firm.
16. Public Utility.
17. Financial Market Utility.
18. Pooled Investment Vehicle.*
- 19. Tax-Exempt Entity.**
20. Entity Assisting a Tax-Exempt Entity.*
- 21. Large Operating Company.**
22. Subsidiary of Certain Exempt Entities* (all entities listed here except 6, 18, 20, 22 and 23)
23. Inactive Entity.*

See [31 C.F.R. § 1010.380\(c\)\(2\)](#).

Exemption 19. Tax-Exempt Entity

“(xix) Tax-exempt entity. Any entity that is:

- A. An organization that is described in [section 501\(c\) of the Internal Revenue Code of 1986 \(Code\)](#) (determined without regard to section 508(a) of the Code) [nearly 30 types of exempt organizations] *and* exempt from tax under [section 501\(a\) of the Code](#) [exempt from federal income taxation], *except* that in the case of any such organization that ceases to be described in section 501(c) and exempt from tax under section 501(a), such organization shall be considered to continue to be described in this paragraph (c)(1)(xix)(A) for the **180-day period** beginning on the date of the loss of such tax-exempt status; A political organization, as defined in section 527(e)(1) of the Code, that is exempt from tax under section 527(a) of the Code; *or*
- B. A **trust** described in paragraph (1) or (2) of [section 4947\(a\) of the Code.](#)” [charitable trusts and split-interest trusts]

See [31 C.F.R. § 1010.380\(c\)\(2\)\(xix\)](#).

Exemption 21. Large Operating Company

“(xxi) Large operating company. Any entity that:

- A. Employs more than **20 full time employees** in the United States, with “full time employee in the United States” having the meaning provided in 26 CFR 54.4980H–1(a) and 54.4980H–3, except that the term “United States” as used in 26 CFR 54.4980H–1(a) and 54.4980H–3 has the meaning provided in § 1010.100(hhh);
- B. Has an operating **presence at a physical office** within the United States; and
- C. Filed a Federal income tax or information return in the United States for **the previous year** demonstrating **more than \$5,000,000 in gross receipts or sales**, as reported as gross receipts or sales (net of returns and allowances) on the entity’s IRS Form 1120, consolidated IRS Form 1120, IRS Form 1120–S, IRS Form 1065, or other applicable IRS form, excluding gross receipts or sales from sources outside the United States, as determined under Federal income tax principles. For an entity that is part of an **affiliated group of corporations** within the meaning of 26 U.S.C. 1504 that filed a consolidated return, the applicable amount shall be the amount reported on the **consolidated** return for such group.”

See [31 C.F.R. § 1010.380\(c\)\(2\)\(xxi\)](#).

Exemption 21. Large Operating Company (cont.)

- A. “...more than 20 full time employees in the United States...”
- “The term full-time employee means, with respect to a calendar month, an employee who is employed an average of **at least 30 hours of service per week with an employer**. For rules on the determination of whether an employee is a full-time employee, including a description of the look-back measurement method and the monthly measurement method, see § 54.4980H-3...” See [26 CFR 54.4980H-1\(a\)\(21\)\(i\)](#).
 - Affiliate entities may not consolidate employee headcount.
 - FinCEN will consider additional guidance or FAQ for time factor.
- B. “...operating presence at a physical office within the United States...;” and
- Meaning an entity regularly conducts its business at a physical location in the U.S. that the entity **owns/leases** and that is **distinct from the place of business of any other unaffiliated entity**.
- C. “...more than \$5,000,000 in gross receipts or sales...”
- Based on activities occurring within the U.S. and revenue on U.S. income tax returns.
 - May not include revenues from non-U.S. source.
 - Affiliate group of corporations may consolidate such revenues.
 - M&A may impact revenue & payroll, thus must determine if exemption applies.

Reporting Requirements for Initial Reports

Three sets of information for (1) reporting companies, (2) beneficial owners and (3) company applicants.

Information for the Reporting Company

- A. The **full legal name** of the reporting company [the name used to establish the entity];
- B. Any **trade name** or “**doing business as**” name of the reporting company;
- C. A **complete current address** consisting of:
 - 1) In the case of a reporting company with a **principal place of business** in the United States, the street address of such principal place of business; and
 - 2) In all other cases, the street address of the **primary location** in the United States where the reporting company conducts business;
- D. The State, Tribal, or foreign **jurisdiction of formation** of the reporting company;
- E. For a *foreign* reporting company, the State or Tribal jurisdiction **where such company first registers**;
- F. **IRS Taxpayer Identification Number (TIN)** (including an Employer Identification Number (EIN)) of the reporting company, or where a foreign reporting company has not been issued a TIN, a **tax identification number issued by a foreign jurisdiction and the name of such jurisdiction**.

See [31 C.F.R. § 1010.380](#)(b)(1)(i) [annotated]

Information for Beneficial Owner

- A. The **full legal name** of the individual;
- B. The **date of birth** of the individual;
- C. A **complete current address of** the individual's **residence**;
- D. A **unique identifying number** and the **issuing jurisdiction** from one of the following documents:
 - 1) A non-expired passport issued to the individual by the United States government;
 - 2) A non-expired identification document issued to the individual by a State, local government, or Indian tribe for the purpose of identifying the individual;
 - 3) A non-expired driver's license issued to the individual by a State; *or*
 - 4) A non-expired passport issued by a foreign government to the individual, if the individual does not possess any of the documents described above; and
- E. An **image of the document** from subsection (D) above.

See [31 C.F.R. § 1010.380](#)(b)(1)(i) [annotated]

Beneficial Owner – Who

- ...‘beneficial owner’...means any individual who, **directly or indirectly**, either exercises **substantial control** over such reporting company OR **owns or controls at least 25% of the ownership interests** of such reporting company.

See [31 C.F.R. § 1010.380](#)(b)(1)(i) [annotated]

Beneficial Owner – Substantial Control

“(i) *Definition of substantial control.* An individual exercises substantial control over a reporting company if the individual:

- A. Serves as a **senior officer** of the reporting company;
- B. Has **authority** over the **appointment or removal** of any senior officer or a majority of the board of directors (or similar body);
- C. **Directs, determines, or has substantial influence over important decisions** made by the reporting company, including decisions regarding:
 - 1) The nature, scope, and attributes of the business of the reporting company, including the sale, lease, mortgage, or other transfer of any principal assets of the reporting company;
 - 2) The reorganization, dissolution, or merger of the reporting company;
 - 3) Major expenditures or investments, issuances of any equity, incurrence of any significant debt, or approval of the operating budget of the reporting company;
 - 4) The selection or termination of business lines or ventures, or geographic focus, of the reporting company;
 - 5) Compensation schemes and incentive programs for senior officers;
 - 6) The entry into or termination, or the fulfillment or non-fulfillment, of significant contracts;
 - 7) Amendments of any substantial governance documents of the reporting company, including the articles of incorporation or similar formation documents, bylaws, and significant policies or procedures; or
- D. Has any other form of substantial control over the reporting company.”

See [31 C.F.R. § 1010.380\(d\)\(1\)\(i\)](#)

Beneficial Owner – Substantial Control (cont.)

“(ii) *Direct or indirect exercise of substantial control.* An individual may **directly or indirectly**, including as a trustee of a trust or similar arrangement, exercise substantial control over a reporting company through:

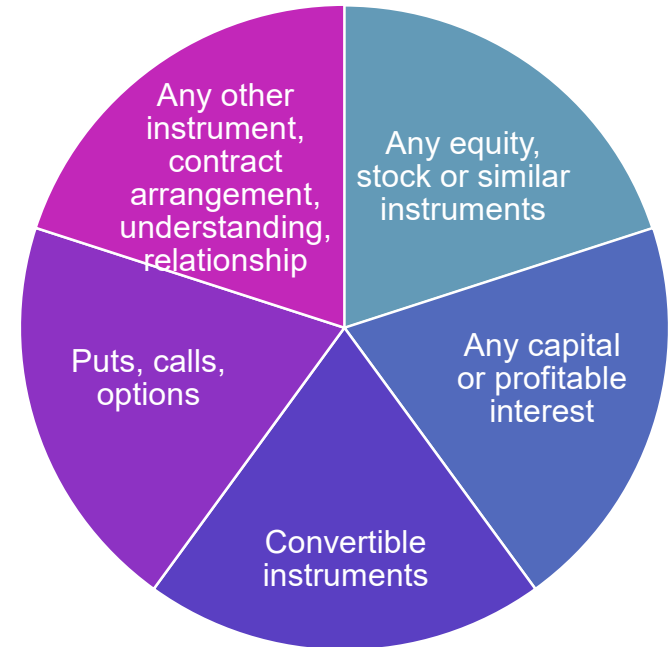
- A. **Board** representation;
- B. Ownership or control of **a majority of the voting power** or voting rights of the reporting company;
- C. **Rights** associated with any **financing arrangement or interest** in a company;
- D. **Control** over one or more **intermediary entities** that separately or collectively exercise substantial control over a reporting company;
- E. Arrangements or financial or business relationships, whether formal or informal, with other individuals or entities acting as **nominees**; or
- F. any other contract, arrangement, understanding, relationship, or otherwise.”

See [31 C.F.R. § 1010.380\(d\)\(1\)\(ii\)](#)

Beneficial Owner – Ownership Interest

“(i) *Definition of ownership interest.* The term “ownership interest” means:

- A. Any **equity, stock, or similar instrument**; preorganization certificate or subscription; or transferable share of, or voting trust certificate or certificate of deposit for, an equity security, interest in a joint venture, or certificate of interest in a business trust; in each such case, without regard to whether any such instrument is transferable, is classified as stock or anything similar, or confers voting power or voting rights;
- B. Any **capital or profit interest** in an entity;
- C. Any **instrument convertible**, with or without consideration, into any share or instrument described in subsections above, any future on any such instrument, or any warrant or right to purchase, sell, or subscribe to a share or interest described in subsections above, regardless of whether characterized as debt;
- D. Any **put, call, straddle, or other option** or privilege of buying or selling any of the items described in subsections above without being bound to do so, except to the extent that such option or privilege is created and held by a third party or third parties without the knowledge or involvement of the reporting company; or
- E. Any other instrument, contract, arrangement, understanding, relationship, or mechanism used to **establish ownership.**”



See [31 C.F.R. § 1010.380\(d\)\(2\)\(i\)](#)

Beneficial Owner – Calculation of Ownership Interest

(iii) *Calculation of the total ownership interests of a reporting company.* In determining whether an individual **owns or controls** at least 25% of the ownership interests of a reporting company, the total ownership interests that an individual owns or controls, **directly or indirectly**, shall be calculated as a percentage of the total outstanding ownership interests of the reporting company as follows:

- A. Ownership interests of the individual shall be **calculated at the present time**, and any **options or similar interests** of the individual shall be **treated as exercised**;
- B. For reporting companies that issue **capital or profit interests** (including entities treated as **partnerships** for federal income tax purposes), the individual's ownership interests are the individual's capital and profit interests in the entity, calculated as a percentage of the total outstanding capital and profit interests of the entity;
- C. For **corporations**, entities treated as corporations for federal income tax purposes, and other reporting companies that issue shares of stock, the applicable percentage shall be **the greater of**:
 - 1) the **total combined voting power of all classes of ownership interests** of the individual as a percentage of **total outstanding voting power of all classes of ownership** interests entitled to vote, or
 - 2) the **total combined value of the ownership interests** of the individual as a percentage of the **total outstanding value of all classes of ownership interests**; and
- D. If the facts and circumstances do not permit the calculations described in either subsection (B) or (C) to be performed with reasonable certainty, any individual who owns or controls **25% or more of any class or type of ownership interest** of a reporting company shall be deemed to own or control 25% or more of the ownership interests of the reporting company.

See [31 C.F.R. § 1010.380\(d\)\(2\)\(iii\)](#) [annotated]

Beneficial Owner – Five Exceptions

- i. A **minor child** (as defined under the law of the place of incorporation of the reporting company), provided that information of a parent or legal guardian of the minor child is reported;
- ii. An individual acting as a **nominee, intermediary, custodian, or agent** on behalf of another individual;
- iii. An **employee** of the reporting company, acting solely as an employee, whose substantial control over or economic interests from the reporting company are derived only from the employment status such employee, provided the employee is not a senior office of the reporting company;
- iv. An individual whose only interest in a reporting company is a **future interest** through a **right of inheritance**; and
- v. A **creditor** of a reporting company.
 - For purposes of this subsection, a creditor is an individual who meets the requirements of “beneficial owner” solely through rights or interests for the **payment of a predetermined sum of money**, such as a **debt** incurred by the reporting company, or a **loan covenant** or other similar right associated with such right to receive payment that is intended to secure the right to receive payment or enhance the likelihood of repayment.

See [31 C.F.R. § 1010.380](#)(d)(3) [annotated]

Information for Company Applicant

- Only reporting companies formed/registered *on or after* **January 1, 2024** need to report, including (same as the reporting requirement for beneficial owner except for the address recruitment):
 - A. The **full legal name** of the individual;
 - B. The **date of birth** of the individual;
 - C. The **street address of the business** if the company applicant who forms or registers an entity in the course of such company applicant's business;
 - D. A **unique identifying number** and the **issuing jurisdiction** from one of the following documents:
 - 1) A non-expired passport issued to the individual by the United States government;
 - 2) A non-expired identification document issued to the individual by a State, local government, or Indian tribe for the purpose of identifying the individual;
 - 3) A non-expired driver's license issued to the individual by a State; *or*
 - 4) A non-expired passport issued by a foreign government to the individual, if the individual does not possess any of the documents described above; and
 - E. An **image of the document** from subsection (D) above.

See [31 C.F.R. § 1010.380](#)(b)(1)(i) [annotated]

Company Applicant – Who

- “Company Applicant” means:
 - 1) The individual who **directly files** the document that **creates/registers** the reporting company;
 - 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.

See [31 C.F.R. § 1010.380\(e\)](#) [annotated]

- Examples
 - Sole practitioner
 - **Attorney + Paralegal** (attorney prepares for formation paperwork and paralegal files with the state)
 - Business Formation Services (directly involved in filling formation documents)

Reporting Deadlines

For (1) initial reports and (2) updated or corrected reports.

Reporting Deadlines

January 1, 2024

January 1, 2025

Created/Registered *before*
January 1, 2024

Must file the initial report on
or before **January 1, 2025**.

Created/Registered *on or after*
January 1, 2024 and *before* January 1,
2025 (i.e., in 2024)

Must file the **initial** report **within 90
calendar days** of earlier of:

- 1) Date received actual notice of
creation/registration, or
- 2) Date SOS first provides public
notice of creation/registration.

Created/Registered *on or after* January 1, 2025

Must file the **initial** report **within 30 calendar days** of
earlier of:

- 1) Date received actual notice of
creation/registration, or
- 2) Date SOS first provides public notice of
creation/registration.

Must file the **corrected** report **within 30 calendar days** after company becomes aware of or
has reason to know of inaccuracy of any information reported.

Must file the **updated** report **within 30 calendar days** after any change to the information
previously submitted (e.g., if reporting company qualifies for exemption or ceases to be
exempted after filling initial report).

Additional Reporting Considerations

Additional Reporting Considerations

- Potential **Penalties** for Incompliance
 - The willful failure to report complete or update BOI to FinCEN, or the willful provision of or attempt to provide false or fraudulent BOI may resulting in a civil or criminal penalties, including:
 - **civil** penalties of up to **\$500** for **each day** that the violation continues, or
 - **criminal** penalties including **imprisonment for up to two (2) years** and/or a **fine of up to \$10,000**.
 - Senior officers of an entity or a person that fails to file a required BOI report may be held accountable for that failure.
 - A person may be subject to civil and/or criminal penalties for willfully causing a company not to file a required BOI report or to report incomplete or false BOI to FinCEN.
- **Safe Harbor Rule** – If a person has reason to believe that a report filed with FinCEN contains inaccurate information and voluntarily submits a report correcting the information **within 90 days** after the initial report of BOI, then the CTA creates a safe harbor from penalty.

Additional Reporting Considerations (cont.)

- Limited Access to BOSS

- 1) U.S. Federal, state, local, and Tribal government agencies
- 2) Foreign law enforcement agencies
- 3) Financial institutions
- 4) Federal functional regulators
- 5) The U.S. Department of the Treasury

See: <https://www.fincen.gov/nprm-fact-sheet>

- FinCEN Identifier

- FinCEN identifier is a unique identifying number that FinCEN will issue to individuals or entities upon request (by submitting to FinCEN an application containing required information.)
- An individual or a reporting company with FinCEN identifier could just include such FinCEN identifier in lieu of information required.
- If there is any changes or inaccurate information in the FinCEN identifier application, such individual or reporting company must file updated or corrected application **within 30 calendar days**.

See [31 C.F.R. § 1010.380](#)(b)(4)

Resources

Resources

- Official Resources
 - [The Final Rule](#) (see 31 C.F.R. § 1010.380)
 - [Official Website for Beneficial Ownership Information](#)
 - [Beneficial Ownership Information Reporting Rule Fact Sheet](#)
 - [Beneficial Ownership Information Reporting FAQ](#) (published September 18, 2023)
- Firm Resources
 - [LGPM Client Alert: Beneficial Ownership Information Rules and Regulations: How It May Impact You](#) (written by @Dale Werts, @Dara Alvarado and @Alex Reed)
 - [EntreView Blog Post: What You Need to Know About the Corporate Transparency Act](#) (written by @Lu Li, revised by @Daniel Tenenbaum)
 - Presentation Deck: BOI Reporting Rules under Corporate Transparency Act (CTA)
- Vendor Platform for BOI Reporting (to be updated)