



BASSFORD REMELE

## A GUIDE TO THE NEW CORPORATE TRANSPARENCY ACT

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### INTRODUCTION

Effective January 1, 2024, the Corporate Transparency Act, or “CTA”, will impose new disclosure obligations on entities formed or registered to do business in the United States.<sup>1</sup> The purpose of the CTA is to make it more difficult for bad actors to hide or benefit from their ill-gotten gains through shell companies or other obscure ownership structures.<sup>2</sup> With noncompliance resulting in hefty civil and criminal penalties, business owners must have a sufficient understanding of the CTA.

#### *Does the CTA apply to my entity?*

The CTA applies to any entity that can be defined as a “Reporting Company”. A “Reporting Company” is any domestic or foreign entity that registers to do business in the United States by filing a document with the Secretary of State or similar office.<sup>3</sup> Common types of reporting companies include limited liability companies, limited liability partnerships, and business trusts.

The CTA probably does not apply to sole proprietorships and general partnerships, and the CTA’s express language states that it does not apply to entities that are subject to separate regulatory obligations to report ownership information to the federal government.<sup>4</sup> Some examples of these exempt entities include public companies, insurance companies, governmental authorities, and inactive companies.

Additionally, entities and their subsidiaries are exempt from the CTA if they:

1. Employ more than 20 employees;
2. Filed a tax return demonstrating more than \$5 million in gross receipts or sales in the previous year; and
3. Have a physical office within the United States.<sup>5</sup>

#### *What do I have to do if my entity is considered a Reporting Company?*

A Reporting Company is required to file a Beneficial Ownership Information report (“BOI Report”) with the Department of Treasury’s Financial Crimes Enforcement Network, which is commonly referred to as “FinCEN”.<sup>6</sup>

Via the BOI Report, the Reporting Company is required to disclose two categories of information, and a third category of information must be disclosed if the Reporting Company was formed or registered on or after January 1, 2024.

First, a Reporting Company must disclose some very basic information, such as the legal name, trade names, the corporate address, the jurisdiction of formation, and the Taxpayer Identification Number or Employer Identification Number. If the Reporting Company is a foreign entity (i.e., not an American entity), it is also required to provide information as to where it was first registered in the United States as well as a foreign tax identification number.<sup>7</sup>

Second, the Reporting Company must identify its “beneficial owner(s)”.<sup>8</sup> The CTA defines a “beneficial owner” as an individual who directly or indirectly, either exercises substantial control over a reporting company or owns or controls at least 25% of the ownership interests of a reporting company.<sup>9</sup> The CTA expressly excludes the following persons and entities from the definition of “beneficial owner”:<sup>10</sup>

- A minor child (as long as the child’s parent’s or guardian’s information is reported);
- An individual acting as an intermediary or agent on behalf of another;
- A person whose control over a Reporting Company derives solely from their employment;
- An individual whose only interest in a Reporting Company is through a right of inheritance;
- A creditor of a Reporting Company (unless they qualify as a “beneficial owner” through substantial control or equity ownership); and
- BOI reports must include the individual’s legal name, date of birth, current address, and an identification document.<sup>11</sup>

Third, if the Reporting Company was formed after January 1, 2024, it must disclose each “applicant”.<sup>12</sup> The CTA defines an “applicant” as an individual who files an application form, registers or files an application to register a corporation, limited liability company, or other similar entity.

### ***When is the BOI Report due?***

A BOI Report’s due date depends on when the Reporting Company was formed.<sup>13</sup> If the company was in existence before January 1, 2024, it must file its BOI Report before January 1, 2025. If the Reporting Company is formed on or after January 2024, but before December 31, 2024, the BOI Report must be filed within 90 calendar days of the Reporting Company’s creation. A Reporting Company that is formed on or after January 1, 2025, is required to file its BOI Report within 30 calendar dates of the Reporting Company’s creation.

### ***I filed the BOI Report. Am I done?***

No. A Reporting Company has an ongoing obligation to update and correct the contents of its BOI Report. Of note, the Reporting Company must provide any changes to any category of information required to be in the BOI Report within 30 days of when the changes occur. Moreover, information that has been reported inaccurately is required to be corrected within 30 days of the discovery of the inaccuracy.<sup>14</sup>

### ***What are the penalties for failing to comply with the CTA?***

Noncompliance with the CTA's reporting requirements may result in civil and criminal penalties.<sup>15</sup> An individual who willfully takes part in a violation of the CTA's reporting requirements may be subject to civil penalties of up to \$500 for each day that the violation continues. An individual may also be subject to criminal penalties of up to 2 years imprisonment and a fine of up to \$10,000.

Fortunately, the CTA provides a safe harbor provision.<sup>16</sup> It states that an individual shall not be subject to civil or criminal penalties when the individual who filed the BOI Report voluntarily corrects any inaccurate information within 90 days from the date of filing.

### ***Additional Resources***

Here are some additional resources that you can look to if you have additional questions or concerns about the CTA:

- The CTA's actual text:  
[https://www.fincen.gov/sites/default/files/shared/Corporate\\_Transparency\\_Act.pdf](https://www.fincen.gov/sites/default/files/shared/Corporate_Transparency_Act.pdf)
- From the Minnesota Secretary of State:  
<https://www.sos.state.mn.us/business-liens/beneficial-ownership-information/>
- From FinCEN:  
[\*FinCEN Beneficial Ownership Information Reporting Frequently Asked Questions\*](#)
- FinCEN Small Entity Compliance Guide:  
[https://www.fincen.gov/sites/default/files/shared/BOI\\_Small\\_Compliance\\_Guide.v1.1-FINAL.pdf](https://www.fincen.gov/sites/default/files/shared/BOI_Small_Compliance_Guide.v1.1-FINAL.pdf)

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<sup>1</sup> Title LXIV of the William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021, Public Law 116-283 (January 1, 2021) (the “NDAA”).

<sup>2</sup> AN INTRODUCTION TO BENEFICIAL OWNERSHIP INFORMATION REPORTING. [https://www.fincen.gov/sites/default/files/shared/BOI\\_FinCEN\\_Brochure\\_508C.pdf](https://www.fincen.gov/sites/default/files/shared/BOI_FinCEN_Brochure_508C.pdf) (Dec. 18, 2023).

<sup>3</sup> *Id.* § 6403(a)(a)(11)(A).

<sup>4</sup> *Id.* § 6403(a)(a)(11)(B); The 23 exemptions from the Corporate Transparency Act’s beneficial ownership information reporting requirement include: securities reporting issuer, governmental authority, bank, credit union, depository institution holding company, money services business, broker or dealer in securities, securities exchange or clearing agency, other exchange registry entities, investment company or investment adviser, venture capital fund adviser, insurance company, state-licensed insurance producer, Commodity Exchange Act registered entity, accounting firm, public utility, financial market utility, pooled investment vehicle, tax exempt entity, entity assisting a tax exempt entity, large operating company, subsidiary of certain exempt entities, inactive entity.

<sup>5</sup> NDAA § 6403(a)(a)(11)(B).

<sup>6</sup> *Id.* §6403(a)(b).

<sup>7</sup> *Id.* §6403(a)(a)(11).

<sup>8</sup> *Id.* §6403(a)(b).

<sup>9</sup> *Id.* § 6403(a)(a)(3)(A).

<sup>10</sup> *Id.* § 6403(a)(a)(3)(B).

<sup>11</sup> *Id.* § 6403(b)(2).

<sup>12</sup> *Id.* § 6403(a)(a)(2).

<sup>13</sup> *Id.* § 6403(b)(1)(C). *See also* FINANCIAL CRIMES ENFORCEMENT NETWORK, BENEFICIAL OWNERSHIP INFORMATION REPORTING: [https://www.fincen.gov/boi-faqs#B\\_1](https://www.fincen.gov/boi-faqs#B_1) (last visited Dec. 12, 2023).

<sup>14</sup> NDAA § 6403(b)(1). *See also* FINANCIAL CRIMES ENFORCEMENT NETWORK, BENEFICIAL OWNERSHIP INFORMATION REPORTING: [https://www.fincen.gov/boi-faqs#B\\_1](https://www.fincen.gov/boi-faqs#B_1) (last visited Dec. 12, 2023).

<sup>15</sup> *Id.* § 6403(h); *See also* FINANCIAL CRIMES ENFORCEMENT NETWORK, BENEFICIAL OWNERSHIP INFORMATION REPORTING: [https://www.fincen.gov/boi-faqs#B\\_1](https://www.fincen.gov/boi-faqs#B_1) (last visited Dec. 12, 2023).

<sup>16</sup> *Id.* § 6403(c)(3)(C).