

In 2021, Congress passed the Corporate Transparency Act (CTA). This law creates a new beneficial ownership information (BOI) reporting requirement intended to make it harder for bad actors to hide or benefit from their ill-gotten gains through shell companies or other opaque ownership structures. Beneficial ownership information will be reported to the Financial Crimes Enforcement Network (FinCEN).

FinCEN will permit Federal, State, local, and tribal officials, as well as certain foreign officials who submit a request through a U.S. federal government agency, to obtain beneficial ownership information for authorized activities related to national security, intelligence, and law enforcement.

WHAT COMPANIES ARE REQUIRED TO REPORT THEIR BENEFICIAL OWNERS?

There are two types of reporting companies:

- 1 Domestic reporting companies are corporations, limited liability companies, and any other entities created by filing a document with a secretary of state or any similar office in the United States.
- 2 Foreign reporting companies are entities (including corporations and limited liability companies) formed under the law of a foreign country that have registered to do business in the United States by filing a document with a secretary of state or any similar office.

While these definitions are extremely broad, there are [23 categories of entities that are exempt](#) from BOI reporting. While not an all-inclusive list, the primary exempt categories are:

- Any company reporting under the SEC
- Governmental authority
- Bank or credit union
- Investment company or advisor
- Insurance company
- Accounting firm
- Public utility
- Tax-exempt entity
- Large operating business (broadest exclusion category); defined as a company that:
 - Employs more than 20 full-time employees based in the U.S.,
 - Maintains physical office within the U.S., **and**
 - Filed a federal income tax return in the prior year reporting more than \$5m of gross receipts.
 - These \$5m gross receipts exclude any foreign gross receipts.

WHAT INFORMATION MUST BE DISCLOSED FOR BENEFICIAL OWNERS?

Each beneficial owner will need to disclose the following:

- 1 Name
- 2 Date of birth
- 3 Residential address
- 4 Identifying number from passport or U.S. driver's license
 - a Additionally, a photocopy of the passport/driver's license will need to be uploaded to FinCEN

HOW WILL COMPANIES FILE THEIR BOI REPORT?

Companies will need to e-file their BOI report directly on the [FinCEN website](#). Note that FinCEN has announced it will not have its e-filing system operational before 1/1/2024.

FinCEN expects to develop APIs so that third-party providers may interface with the FinCEN website, thus allowing third-party providers to file BOI reports via their own software that interfaces with FinCEN. There are no timetables on when this ability will be available.

WHO ARE BENEFICIAL OWNERS?

A beneficial owner is an individual who either directly or indirectly:

- Exercises substantial control over the reporting company, or
- Owns or controls at least 25% of the reporting company's ownership interests.

An individual can exercise substantial control over an entity (regardless of whether that individual has any actual legal ownership in the company) if they fall in any of these categories:

- 1 Maintains the title of a senior officer (President, CEO, COO, CFO, general counsel, or any similar officer)
- 2 Has authority to appoint or remove senior officers or a majority of directors
- 3 Has substantial influence over important decisions made by the company; examples include:
 - a Anyone able to select or terminate a business line or geographic focus
 - b Anyone able to enter into /terminate significant contracts
 - c Anyone able to sell or lease significant assets
 - d Anyone able to approve major expenditures, issuance of new equity, or incurrence of new debt.
- 4 Has any other form of substantial control over the company (i.e., catchall provision for anyone else who may have control but falls outside the above categories).

WHEN ARE BOI REPORTS DUE?

If your company existed **before January 1, 2024**, it must file its initial beneficial ownership information report **by January 1, 2025**.

If your company is created **between January 1, 2024, and December 31, 2024**, it must file its initial beneficial ownership information report **within 90 days**.

If your company is created **after January 1, 2025**, it must file its initial beneficial ownership information report **within 30 days**.

This 30/90-day window begins on the earlier of:

- Date the company receives creation notice that its creation is effective, or
- Date the secretary of state publishes notice of creation on a publicly accessible registry maintained by the secretary of state.

If there are any changes to the reporting company or any of its beneficial owners, the company has 30 days to file an updated BOI report with FinCEN. Examples of changes that would require updated BOI reports:

- 1 Any change to the reporting company itself (new address or DBA name)
- 2 Appointment/termination of any senior officers
- 3 Any change to a beneficial owner's demographic information, such as:
 - a Change in residential address
 - b Change in legal name from marriage/divorce
 - c Updated driver's license or passport



ARE THERE FEES ASSOCIATED WITH BOI REPORTING OR PENALTIES RELATED TO NON-FILING?

There are no fees for filing a BOI report on the FinCEN website. Failure to report complete or updated beneficial ownership information to FinCEN or an attempt to provide false beneficial ownership information may result in 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 years and/or a fine of up to \$10,000.

Senior officers of an entity that fails to file a required BOI report may be held accountable for that failure.

If a company attempts to comply with BOI reporting but makes an accidental mistake/omission, the company may avoid penalties if the mistake/omission is corrected within 90 days of the original filing deadline.

REFERENCES

[Beneficial Ownership Information Reporting Rule Fact Sheet | FinCEN.gov](#)

[Beneficial Ownership Information Reporting | FinCEN.gov](#)

[Beneficial Ownership Information Reporting FAQs | FinCEN.gov](#)