

## Attention Business Entities: Do You Need to File a Business Owners Information Report with FinCEN? All Companies Must Review This New Requirement!

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The Corporate Transparency Act (CTA) became effective on January 1, 2024. Unless an entity meets an exemption, the CTA requires corporations, limited liability companies, and other entities to (1) report specific beneficial ownership and control information, (2) disclose information about who created the entity or registered it to do business in the US, and (3) report any change to previously reported information to the US Department of Treasury's Financial Crimes Enforcement Network (FinCEN). **Failure to submit these reports within a specified time-period can result in significant civil and criminal penalties.**

FinCEN estimated 32.6 million companies will be required by the CTA to report personal information about their beneficial owners, however less than one million have filed to date. Reports must be filed no later than December 31, 2024 – so do not delay.

### **Who is required to file with FinCEN?**

A "Reporting Company" is a corporation, LLC or other entity created in the United States by filing a document with a secretary of state or similar office under the law of a state or Indian tribe. A Reporting Company can also be a foreign company registered to do business in the U.S.

### **Attorneys**

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### **Practice Areas**

Corporate Transparency Act (CTA) Counseling

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### **Which Companies are Exempted?**

If a Reporting Company qualifies for one of the 23 exemptions from the reporting requirements of the CTA, it is exempted from submitting a Beneficial Owner Information (BOI) Report to FinCEN, unless and until the exemption no longer applies. The availability of an exemption depends on many factors, and as such should be confirmed with your attorney. Some of the listed exemptions are certain governmental entities, banks, credit unions, accounting firms, venture capital fund advisors, insurance companies, public utilities, tax-exempt entities and large operating companies. To meet the large operating company exemption you must (1) employ more than 20 full time employees in the United States, (2) have an operating presence at a physical office within the United States and (3) have 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.

A Reporting Company that does not meet an exemption must file a BOI Report with FinCEN that provides certain information about its Beneficial Owners.

### **What is a Beneficial Owner?**

A “Beneficial Owner” is an individual who: (1) owns or controls (directly or indirectly) at least 25 percent of a Reporting Company; or (2) has substantial control over a Reporting Company. Determining a Beneficial Owner through ownership interests requires a two-step process: (1) identifying and classifying the various equity interests and rights to acquire equity interests in the Reporting Company; and (2) calculating whether the holders of those equity interests meet the threshold to be considered a Beneficial Owner. The determination of a Beneficial Owner is complex and unique to each company due to variations in governance and organizational structures. As such, guidance from legal counsel is advised before preparing and filing your BOI Report.

### **Who is a Company Applicant?**

Each Reporting Company formed on or after January 1, 2024, must disclose its “Company Applicants.” Company Applicants are the individuals (up to 2 individuals) who directly filed (physically or electronically) the document that created the company and the individual who was primarily responsible for directing or

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controlling such filing. If your Reporting Company is created in 2024, the initial BOI Report is due 90 days after your Reporting Company is formed. Reporting Companies formed prior to January 1, 2024, do not need to report their “Company Applicants.”

### **What are the penalties for failing to report on time?**

A company who violates the CTA by failing to file or update its report may be subject to civil penalties (up to \$591 per day) **and** criminal penalties (fines up to \$10,000, imprisonment of up to two years, or both).

### **How Does a Company Report?**

A Reporting Company can file its BOI Report electronically through FinCEN’s website or a third-party vendor.

### **Do states also have Corporate Transparency Act Reporting Requirements?**

Recently New York, California, Massachusetts and Maryland have enacted or proposed similar state regulations aimed at increasing the transparency of beneficial ownership.

If your company is registered in these states, please contact us to determine if you also have state reporting requirements.

### **Laner Muchin is here to help**

We can assist you with any CTA compliance questions, including whether exemptions apply to your company, identifying your beneficial owners, updating your corporate documents to assure compliance with the CTA, and answer questions while you prepare your required reporting. Please reach out to your Laner Muchin counsel to connect you with our CTA team.