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The Corporate Transparency Act – Impact on Owners of LLCs



The United States Department of the Treasury's 2024 National Money Laundering Risk Assessment cites the misuse of legal entities as a "significant, ongoing vulnerability in the U.S. financial system." Illicit actors exploit legal entity structures to "facilitate money laundering schemes, fraud, sanctions evasion, tax evasion, and drug trafficking, among other types of offenses."¹ In response to the prevalence of such illegal activity, The Corporate Transparency Act (CTA), enacted by Congress in 2021, aims to assist law enforcement in preventing, identifying, and combating financial crimes. As a result of the CTA, and beginning January 1, 2024, small businesses are now required to

file a Beneficial Ownership Information (BOI) report with the Financial Crimes Enforcement Network (FinCEN). Small business owners must comply with the new law or risk substantial penalties—up to \$500 each day the business is non-compliant.

Companies mandated to file the BOI report are called "reporting companies," and are broken down into two categories: domestic reporting companies and foreign reporting companies. Domestic companies include corporations, limited liability companies (LLC), limited partnerships, general partnerships, limited liability partnerships, and Delaware statutory trusts. Foreign reporting companies include corporations and LLCs created under foreign law but registered to do business in the U.S. Reporting companies registered to do business before January 1, 2024 have until January 1, 2025 to file their first BOI reports. Reporting companies created or registered between January 1, 2024 and January 1, 2025 have 90 calendar days after receiving notice that their company's registration is effective to file initial BOI reports. Reporting companies established on or after January 1, 2025 have 30 calendar days from notice of registration to file their initial BOI reports. BOI reporting is not an annual requirement unless a company needs to update or correct information.

Importantly, there are 23 specific exemptions whereby a BOI report is not required to be filed. The most prominent of these exemptions center on large operating companies with 20 full-time employees and \$5,000,000 in gross receipts as demonstrated on a federal income tax return (foreign sales are excluded). Other significant exemptions exist for subsidiaries of certain exempt entities, securities reporting issuers, inactive entities, and tax-exempt entities among a host of others. Subsidiaries of exempt entities such as large operating companies must be "wholly owned" or "wholly controlled" to qualify for exemption.² In many cases, owners of active LLCs, whether held solely or through family members, are required to file the BOI report.

BOI reports must identify each "beneficial owner" of the business. Beneficial owners are identified as any individual who, directly or indirectly, exercises substantial control over a reporting company or owns or controls at least 25 percent of the ownership interests of a reporting company. The BOI report must contain the full legal name, date of birth, current residential address, and unique identifying number from a non-expired state or government issued ID (passport or state driver's license) for each beneficial owner.²

A live example of an entity that is considered a reporting company, and hence required to file a BOI report, may be an LLC owned by two individuals. In this example, the business is actively engaged in the purchase and sale of real estate. Individual A is the President and Individual B is the CFO. The individuals both own 50% of the company and are senior officers. As such, both individuals are considered beneficial owners and qualify in two ways—they own 25% or more of the interests and have substantial control as officers of the company. Both must be included in the BOI filing.



In some instances, LLCs are owned by trusts. Taking the example above a step further, if the LLC is owned by a trust and the two individuals are the trustees, then BOI reporting would still be a requirement. If an estate or trust holds an interest in a reporting company, an executor, trustee, settlor, or beneficiary may be deemed a beneficial owner of a reporting company.³

The Corporate Transparency Act is complex, and we have merely brushed the surface of the significant details associated with it. To determine if your business entity requires the filing of a BOI report under the CTA, we encourage you to seek advice from a qualified tax professional or attorney familiar with the underlying details and complexity of the act.

Sources:

¹ Firststep Business Solutions. "Stay Compliant with a BOI Report." Do I Need to File A BOI Report? | Firststep Business Solutions, firststepbusiness.com/get-started/boi/form. Accessed 29 Apr. 2024.

² Sheppard Mullin. "Trust and Estate Considerations with the Corporate Transparency Act." Sheppardmullin.Com, [www.sheppardmullin.com/media/publication/2167_Trust and Estate Considerations with the Corporate Transparency Act.pdf](https://www.sheppardmullin.com/media/publication/2167_Trust%20and%20Estate%20Considerations%20with%20the%20Corporate%20Transparency%20Act.pdf). Accessed 29 Apr. 2024.

³ US Treasury. 2024 National Money Laundering Risk Assessment (NMLRA), Feb. 2024, home.treasury.gov/system/files/136/2024-National-Money-Laundering-Risk-Assessment.pdf.

