



The Corporate Transparency Act (CTA)

On Jan. 1, 2024, the Corporate Transparency Act became effective. Every new corporation, limited liability company (LLC), limited partnership and any entity whose existence is created by a filing with a Secretary of State in any state may be required to file with the Financial Crimes Enforcement Network (FinCEN). More than 32 million entities are estimated to be affected.

Under the new legislation, businesses that meet certain criteria must submit a [Beneficial Ownership Information \(BOI\) Report](#), and FinCEN has provided the following FAQs: [BOI – FAQs](#).

Background

The Corporate Transparency Act (CTA) was established to prevent individuals with malicious intent from hiding or benefitting from the ownership of their U.S. entities to facilitate illegal operations, which, according to Congress, is a widely used tactic that affects national security and economic integrity. On Sept. 30, 2022, the Financial Crimes Enforcement Network (FinCEN) issued a final rule implementing requirements for beneficial owners as part of the CTA. The final rule significantly broadens the scope of information that certain legal entities must disclose and is a meaningful step towards fulfilling the CTA's objective to expand and modernize the U.S. anti-money laundering regime.

Penalty for Non-Compliance

Compliance with the CTA is not optional, and the penalties for willful non-compliance are severe, including civil penalties of up to \$500 per day of violation and criminal penalties of up to \$10,000 in fines and/or imprisonment for up to two years.

Some Companies are Exempt

Companies are exempt from filing if they meet all the following criteria:

- Entity employees more than 20 full-time employees in the United States
- Entity had an operating presence at a physical office in the United States
- Entity has greater than \$5M gross receipts or sales as reported on a federal income tax return

Where to Start

The information provided by AmericanHort is for general understanding and does not, and is not intended to, constitute legal or accounting advice. We urge all AmericanHort members to submit a BOI report if they meet the filing criteria. Many public accounting firms will not offer assistance with these filings and will refer you to seek legal advice.

Feedback from some small business owners suggests that the process is uncomplicated for those with a basic corporate structure (single owner or a few owners). However, the reporting complexity escalates with an increasing number of beneficial owners.

The Information

The requirements for the BOI report depend on the establishment date of the reporting companies. Entities formed or registered after January 1, 2024, are obligated to furnish details about the business, its beneficial owners, and its company applicants. However, businesses established before this date are not required to provide information regarding company applicants.

Every reporting company is required to provide its legal name and trademarks, along with its current U.S. address. For domestic companies, this address may be the location of their primary business establishment. Foreign-based entities should provide the address for their operational base in the U.S. Additionally, companies must provide a taxpayer identification number and indicate the jurisdiction where they were established or registered.

Information to be included in the CTA reports includes company information and information on any individual who is a direct beneficial owner. The inclusion of “beneficial owners” will affect people listed as trustees or even successor trustees in the direct owner’s state plan. (Some entities will name successor trustees in their estate plans without even asking the person named. This could now result in the successor trustee filing private information with the federal government under the CTA.)

Company information reported includes:

- Legal name and all trade names or DBA (doing business as) names for the company.
- Actual street address for the company’s principal place of business (not a P.O. Box or lawyer’s or adviser’s address).
- State of formation.
- Identification number. A pass-through entity, like a single-member LLC, that may not be required to have a tax ID number may now have to obtain a unique identification number.
- An identity document from an issuing jurisdiction such as filed Articles of Incorporation or Organization, including an image of that document.
- Beneficial owner reporting. Reporting companies will be required to file reports for all “beneficial owners.” A company can and often will have more than one beneficial owner. Information required for each beneficial owner is:
 - Full legal name (not just initials)
 - Date of birth
 - Home address (not P.O. Box or adviser/lawyer’s address)
 - Photocopy (PDF) of the individual’s U.S. passport or driver’s license

Apart from the initial filing, there are ongoing requirements to provide updates if/when changes occur. Note that some of these changes may not have been considered significant by business owners previously. For instance, changes to a beneficial owner's change of address, legal name resulting from marriage or divorce, or acquisition of a new driver's license could require an update to the company's BOI report. Operational adjustments or changes in delegation of authority may also warrant updates. Moreover, if modifications in the operation or delegation of responsibilities within the business result in conferring substantial control to a new individual, updates to filings may be necessary, even if the individual does not hold any ownership in the business. The timeframe for reporting these changes can be as brief as 30 days.

Who is a beneficial owner?

A reporting company can have more than one beneficial owner. A beneficial owner owns or controls at least 25% of the interests of a reporting company. A reporting company could have one beneficial owner who both exercises substantial control and owns or controls at least 25% of the ownership interest of the reporting company. There is no maximum number of beneficial owners.

Virtually all small family businesses will need to report. The CTA will catch and require reporting from almost every small family business, including LLCs and other entities designed to hold only real estate. Even the single-member LLCs, which are “disregarded” for income tax purposes, must file reports with FinCEN under the CTA.

The term “ownership” itself is not as straightforward or simple as it may appear. Ownership is not limited to actual record title to the shares or membership interests. Ownership is defined broadly in the CTA to include profit interests, capital interests, options, calls, puts and convertible notes or warrants.

Ownership can arise under the CTA definition through joint arrangements such as trusts, voting trusts and informal partnerships.

Who holds substantial control under the CTA?

People holding “substantial control” must be included in the report. They would appear to include:

- Senior officers as well as all individuals who direct, determine, or have substantial influence over important decisions made by a reporting company.
- Directors of the reporting entity.
- An individual with authority over the appointment of any senior office or the majority of the board of directors
- Note that minors do not report, but a legal guardian or trustee may have to report.

Substantial control can be exercised through board representation, ownership, or control of a majority of voting rights, or any other contract, arrangement, understanding, or relationship, meaning there are no hard-and-fast rules for determining what parties qualify as beneficial owners of reporting companies. Rather, reporting companies will need to undertake a factual assessment to determine which individuals qualify as beneficial owners under the substantial control standard.

Where can business owners get help with their beneficial ownership information reports?

While companies have the option to prepare their own BOI reports, it is advisable to seek guidance from a knowledgeable advisor, such as an attorney, during the initial filing or when updates are required to ensure they are completed on time and to FinCEN's standards. Certain legal nuances may necessitate interpretation of facts to determine the inclusion of beneficial owners in the filings. AmericanHort will work to identify qualified attorneys to help assist in the process.

When are reports required?

Every reporting company must file a report for companies that are in existence on January 1, 2024. Initial reports are due by January 1, 2025. For new entities created on or after January 1, 2024, the initial reports are due within 90 days from the formation date. The reporting company must also report changes within 30 days of any change. Business owners and advisers must take the appropriate steps to inform the appropriate people of these requirements.

CTA Being Challenged

The National Small Business Association (NSBA) has challenged the constitutionality of the CTA in a case currently in the United States District Court. The NSBA asserts that the CTA illegally encroaches on each individual state's power to regulate entity formations:

- Congress has no authority over corporate formation or reporting because a reporting company has not engaged in or conducted any foreign, interstate or Indian commerce.
- CTA violates the Fourth Amendment's search and seizure laws.
- CTA compels speech and puts unreasonable burdens on free speech and violates the due process laws.
- NSBA also complains of the high cost of compliance. FinCEN itself estimates that the average burden for a beneficial owner is 650 minutes per response for reporting companies with complex beneficial ownership structures.

A bipartisan letter led by Sen. Rick Scott (R., Fla.) in December asked FinCEN to delay the reporting system implementation by a year, but the agency declined.

Final Word

The CTA requirements should not be ignored, as the penalties are severe both in terms of financial and even jail time for intentional failures to report. Additional information can be found on the FinCEN website. AmericanHort will continue to provide updates and resources regarding CTA and filing requirements.