



Featured News

ALERT

**NEW REPORTING REQUIREMENTS TO BE
IMPOSED UPON BUSINESSES PURSUANT TO THE
CORPORATE TRANSPARENCY ACT**

Under previous state and federal laws, business entities were not required to disclose information concerning the business' "Beneficial Owners" (i.e. the individuals who indirectly or directly own and/or control the entity). However, commencing on January 1, 2024, this will no longer be the case for the vast majority of businesses.

On January 1, 2021, Congress enacted the Corporate Transparency Act (the "CTA"). The CTA was introduced in order to prevent money laundering, tax fraud, the financing of terrorism and other illegal acts.^[1] According to the Financial Crimes Enforcement Network of the Department of Treasury ("FinCEN"), the lack of transparency surrounding beneficial owners of businesses "allows criminals, corrupt officials, and other bad actors to hide their identities and launder illicit funds through the United States using shell and front companies."^[2] Therefore, FinCEN has been tasked with creating and maintaining a national registry of all of the beneficial owners of any company that falls within the definition of a "Reporting Company".

The CTA broadly defines the term "Reporting Company" and, as such, nearly all business entities will be deemed a Reporting Company. The term "Reporting Company" means a corporation, limited liability company or other similar entity that is (i) created by the filing of a document with a secretary of state or similar office under the law of a State or Indian Tribe; or (ii) formed under the laws of a foreign country and registered to do business in the United States by the filing of a document with a secretary of state or similar office under the law of a State or Indian Tribe.^[3] There are a number of entities that are exempt from the reporting requirements; however, most of these exempt entities are those which are already subject to state and federal regulations such as banks, federal credit unions, bank holding companies, money transmitting businesses, securities brokers and dealers, insurance companies, public utilities, public accounting firms and tax exempt entities.^[4] An exemption also exists for "large operating companies" that (i) employ more than twenty (20) full time employees; (ii) filed in the previous year federal income tax returns in the United States demonstrating more than Five Million Dollars (\$5,000,000) in gross receipts or sales; and (iii) has an operating presence at a physical office within the United States.^[5]



As part of FinCEN's national registry, each Reporting Company will be required to submit to FinCEN beneficial ownership information reports ("BOI Reports") containing information identifying the company's Beneficial Owners.^[6] Under the CTA, a "Beneficial Owner" is an entity or individual who, directly or indirectly exercises substantial control over the Reporting Company or owns or controls not less than twenty-five percent (25%) of the ownership interests of the entity.^[7] Each Reporting Company, through its BOI Reports, must identify each Beneficial Owner of the applicable Reporting Company and provide the following information for each Beneficial Owner: (i) full legal name; (ii) date of birth; (iii) current residential or business street address; and (iv) either a unique identifying number from an acceptable identification document (i.e. a passport, driver's license or identification card issued by a State or local government or Indian Tribe) or an assigned FinCEN identifier.^[8] A FinCEN identifier is a unique identifying number that FinCEN will issue to individuals or Reporting Companies upon request, subject to certain conditions. For individuals, FinCEN will issue a FinCEN identifier if an individual submits to FinCEN the same four (4) pieces of identifying information as would be required in a BOI Report. For Reporting Companies, FinCEN will issue a FinCEN identifier only at or after the time the Reporting Company files an initial report. FinCEN initially proposed to allow a Reporting Company to use an individual or entity's FinCEN identifier in lieu of providing individual pieces of its Beneficial Owners' information in certain instances, however, FinCEN has decided to revise and resubmit that portion of the proposed rule for additional public comment.^[9]

The aforementioned information required to be reported to FinCEN is to be confidential and may be disclosed by FinCEN only when requested by the following: (i) a federal agency engaged in national security, intelligence or law enforcement; (ii) a state law enforcement agency that has obtained a court order for the information; (iii) the Treasury Department; (iv) a financial institution that has obtained the Company's consent; and (v) a federal functional regulator or other appropriate regulatory agency.^[10]

FinCEN will begin accepting BOI Reports on January 1, 2024 and will not accept reports before that date.^[2] **Business entities both new and old will be required to comply with the CTA and the new reporting requirements.** For companies formed *prior* to January 1, 2024, the company's initial BOI Report must be filed on or before January 1, 2025.^[2] Companies formed *after* January 1, 2024 must file their initial BOI Report within thirty (30) days of the company's receipt of actual notice that its formation is effective or after a secretary of state, or similar office, provides public notice of its formation, whichever is earlier.^[2] Thereafter, each Reporting Company must file an updated BOI Report within one (1) year of any changes to the previously reported information.^[11]

At this time, all business entities should determine whether they will be deemed a Reporting Company, under the CTA, and thus be required to file a BOI Report and, if so, begin collecting the information of each Beneficial Owner of the company as discussed above. As January 1, 2024, approaches, Brothers Smith LLP would be happy to assist you with the preparation of BOI Reports and address any questions you may have concerning reporting requirements and/or exemptions. Please do not hesitate to contact us at Brothers Smith LLP if you have any questions concerning the CTA.

[1] H.R. 2513, 116th Congress, 1st Sess.

[2] FinCEN Beneficial Ownership Information Reporting Frequently Asked Questions, Published March 24, 2023

[3] 31 U.S.C.S. § 5336 (a)(11)

[4] 31 U.S.C.S. § 5336 (a)(11)((b)(i)-(xx)

[5] 31 U.S.C.S. § 5336 (a)(11)((b)(xxi)

[6] 31 U.S.C.S. § 5336 (b)(1)(A)

[7] 31 U.S.C.S. § 5336 (a)(3)

[8] 31 U.S.C.S. § 5336 (b)(2)

[9] FinCEN Final Beneficial Ownership Information Reporting Rule, promulgated September 30, 2022

[10] 31 U.S.C.S. § 5336 (c)(2)

[11] 31 U.S.C.S. § 5336 (b)(1)(D)



Author

[Kimberleigh A. Ferrando](#)

T 925.944.9700

kferrando@brothersmithlaw.com

BROTHERS SMITH LLP provides its clients, professional advisors and its friends with up-to-date reports on recent developments in business, real estate, employment, estate planning and taxation.

[Learn More](#)

[Practice Areas](#)

[Professionals](#)

[Publications](#)

[About](#)

[Contact Us](#)

Stay Connected



Primerus
Member

[Email Us](#)

2033 North Main Street, Suite 720

Walnut Creek, California 94596

T 925.944.9700 F 925.944.9701

www.brothersmithlaw.com

CIRCULAR 230 DISCLOSURE – Pursuant to rules and regulations imposed by the Internal Revenue Service, any tax advice contained in this communication, including any attachments, is not intended or written to be used, and cannot be used, for the purpose of (1) avoiding tax penalties under the Internal Revenue Code or (2) promoting, marketing or recommending to another person any transaction or matter addressed herein.

The summary which appears above is reprinted for information purposes only. It is not intended to be and should not

be considered legal advice nor substitute for obtaining legal advice from competent, independent, legal counsel. If you would like to discuss these matters in more detail, please feel free to contact us so that we can provide the clarification and resources you need to make effective decisions.