



CORPORATE TRANSPARENCY ACT

Ready or Not, Here it Comes!

1

AGENDA

- **Introduction / History**
- **Corporate Transparency Act**
- **Implementation**
- **What Comes Next**

2

IT ALL STARTED WHEN...

- **15th G7 Summit Paris (1989)**
 - Canada, France, West Germany, Italy, Japan, UK, US
- **Financial Action Task Force (FATF)**
 - Started with 16 members; now has 39
 - Evolving recommendations revised based on changes in patterns in money laundering
 - 1990: Forty (40) recommendations
 - 2001: Expanded mandate to also combat terrorist financing
 - 2006: Report – Highly Critical of U.S.
 - 2012: Recommendations 24 & 25 – Transparency and Beneficial Ownership of Legal Persons and Arrangements

3

FATF

- **2016 FATF Mutual Evaluation of the United States**
 - Generally inadequate
 - No mechanisms in place to record or verify beneficial ownership in the states during corporate formation



4

IF AT FIRST YOU DON'T SUCCEED...

- **110th Congress – Carl Levin 2008 Incorporation Transparency and Law Enforcement Assistance Act** **X**
- **115th Congress**
 - **The Closing Loopholes Against Money-Laundering Practices (“CLAMP”)** **X**
 - **The Counter Terrorism and Illicit Finance Act** **X**
 - **The True Incorporation Transparency for Law Enforcement (“TITLE”) Act** **X**
 - **The Corporate Transparency Act (2017)** **X**
- **116th Congress – Representative Maloney: Corporate Transparency Act** **✓✓**

5

CTA

The Corporate Transparency Act (CTA) was passed as part of the Anti-Money Laundering Act of 2020 within H.R. 6395, The National Defense Authorization Act FY 2021, enacted January 1, 2021 (NDAA).

To ensure that persons who form corporations or limited liability companies in the United States disclose the beneficial owners of those corporations or limited liability companies, in order to prevent wrongdoers from exploiting United States corporations and limited liability companies for criminal gain, to assist law enforcement in detecting, preventing, and punishing terrorism, money laundering, and other misconduct involving United States corporations and limited liability companies, and for other purposes.

6

CTA

The Corporate Transparency Act, 31 U.S. Code § 5336

- First Federal Beneficial Ownership Disclosure Requirement in the United States
- Amends Bank Secrecy Act (BSA)
- Targets Shell Companies
- Effective January 1, 2024
- US Department of the Treasury, **Financial Crimes Enforcement Network** (FinCEN) to Develop Regulations

7

FINCEN

- Division of US Treasury
- Designated administrator of Bank Secrecy Act (BSA)
- Mission: Safeguard the financial system from illicit use, combat money laundering, and promote national security.



8

FINCEN

Rulemaking



- BOI Reporting Requirements
- Access & Disclosure of BOI
- Revise Customer Due Diligence Rule (Bank Secrecy Act)

9

PROPOSED RULES

Advanced Notice of Proposed Rulemaking for Beneficial Ownership Information Reporting

April 2021 Advanced Notice of Proposed Rulemaking

- Over 200 comments submitted
- Requests for clarification of key terms
- Impact on small businesses

10

PROPOSED RULES

Notice of Proposed Rulemaking for Beneficial Ownership Information Reporting

Issued December 8, 2021

Public Commentary by February 7, 2022

11

FINCEN'S FINAL RULE

Final Rule for Beneficial Ownership Information Reporting (31 CFR 1010)

Issued September 29, 2022

Requires **reporting companies** to file reports with FinCEN that identify two categories of individuals: (1) the **beneficial owners** of the entity; and (2) individuals who have filed an application with specified governmental or tribal authorities to form the entity or register it to do business (**company applicant**).

12

REPORTING COMPANIES

A corporation, LLC or *other similar entity* that is created by the filing of a document with the Secretary of State or a similar office under the law of a state or Indian Tribe; or formed under the law of a foreign country and registered to do business in the US by the filing of a document with a Secretary of State or similar office under the laws of a state or Indian Tribe.

13

REPORTING COMPANIES

***Other similar entities* – created by a filing with a government office**

Corporations, LLCs, limited liability partnerships, limited liability limited partnerships, business trusts, and most limited partnerships

Domestic – Formed in the United States

Foreign – Formed under law of foreign country and registering in the US

14

REPORTING COMPANIES

Exemptions

Twenty-three (23) types of entities that are exempt from the definition of reporting company:

1) Securities issuers; 2) domestic governmental authorities; 3) banks; 4) domestic credit unions; 5) depository institution holding companies; 6) money services businesses; 7) brokers or dealers in securities; 8) securities exchange or clearing agencies; 9) other Securities Exchange Act of 1934 entities; 10) registered investment companies and advisers; 11) venture capital fund advisers;

15

REPORTING COMPANIES

Exemptions Cont.

Twenty-three (23) types of entities that are exempt from the definition of reporting company:

12) insurance companies; 13) state licensed insurance producers; 14) Commodity Exchange Act registered entities; 15) accounting firms; 16) public utilities; 17) financial market utilities; 18) pooled investment vehicles; 19) tax exempt entities; 20) entities assisting tax exempt entities; 21) **large operating companies**; 22) subsidiaries of certain exempt entities; and 23) inactive businesses.

16

REPORTING COMPANIES

Exemption

Large Operating Company

- (1) Employs more than 20 employees on a full-time basis in the US;
- (2) Has an operating presence at a physical office within the US; **and**
- (3) More than \$5M in gross receipts in sales

17

COMPANY REPORT

Beneficial Owner Information Report (BOR, BOI Report, or Company Report)

- (1) Responsibility of the reporting company
- (2) Reporting company certifies the information
- (3) Identifying information for
 - (1) Reporting Company
 - (2) Beneficial Owner(s)
 - (3) Company Applicant(s) if formed after 12/31/2023

18

COMPANY REPORT (BOI REPORT)

Reporting Company

- (1) legal name of the company;
- (2) d/b/a name(s);
- (3) principal place of business street address (specifically says no PO Box or address of formation agent);
- (4) jurisdiction of formation or registration; and
- (5) unique identification number (EIN/TIN)

19

BENEFICIAL OWNER(S)

Any individual who, directly or indirectly, through any contract, arrangement, understanding, relationship, or otherwise, exercises substantial control over the entity, or owns or controls 25 percent or more of the ownership interests of the entity, or receives substantial economic benefits from the assets of the entity.

The rule sets forth a range of activities that could constitute “**substantial control**” of a company. It also provides guidance regarding who they consider to be able to make significant decisions on behalf of the entity.

20

BENEFICIAL OWNER(S)

Substantial Control:

- Service as a senior officer of a reporting company (excludes purely ministerial roles such as assistant secretary and treasurer)
- Authority over the appointment or removal of any senior officer or majority of the board of directors (or similar body) of a reporting company
- Direct, determine, or have substantial influence over important decisions
- Any other form of substantial control over the reporting company

21

COMPANY REPORT (BOI REPORT)

Beneficial Owner Information

- (1) full legal name of the individual;
- (2) date of birth of the individual;
- (3) complete current **residential** street address;
- (4) unique identification number and issuing jurisdiction from **non-expired**:
 - a) US passport;
 - b) ID document issued by a state, local government, or Indian tribe
 - c) State driver's license; or
 - d) Passport issued by a foreign government **if** the individual has no other identification; **and**
- (5) an image of the document

22

BENEFICIAL OWNER(S)

Exempt:

- Minor Children
- Nominees, Intermediaries, Custodians, and Agents
- Individuals acting solely as an employee
- Individual whose only interest is through a right of inheritance
- Creditors with no beneficial ownership rights

23

COMPANY APPLICANT

Company Applicant:

1. Individual who directly files the document that creates the domestic entity or registers a foreign entity to do business in the United States;
and
2. Individual who is primarily responsible for directing or controlling the filing of the relevant document by another

24

CUTTING A BREAK?

- Limit Company Applicant to 2 individuals
- Only have to provide Company Applicant information for entities formed AFTER January 1, 2024
- Possible to use business address rather than residential address
- Not required to update Company Applicant information if it changes

25

COMPANY APPLICANT

FinCEN Guidance:

"In many cases, company applicants may be employed by a business formation service or law firm. For example, there may be an attorney primarily responsible for overseeing the preparation and filing of incorporation documents and a paralegal who directly files them with a state office to create the reporting company. In this example, this reporting company would report two company applicants—the attorney and the paralegal—but additional individuals who may be indirectly involved in the filing would not need to be reported."

26

COMPANY REPORT (BOI REPORT)

Company Applicant (limited to two (2) individuals)

- (1) individual's full legal name;
- (2) individual's date of birth;
- (3) complete current residential or **business street address**;
- (4) unique identification number and issuing jurisdiction from non-expired:
 - a) US passport;
 - b) ID document issued by a state, local government, or Indian tribe
 - c) State driver's license; or
 - d) Passport issued by a foreign government **if** the individual has no other identification; **and**
- (5) an image of the identification document

27

TIMING

January 1, 2024

Company Report

- Existing companies formed **before** 1/1/2024: **one year** to file BOI Report
- New companies formed **after** 1/1/2024: **30 days** to file BOI Report

Updates and Corrections

- 30 days to file updates
- 30 days from discovery of inaccuracy to file correction

28

PENALTIES FOR REPORTING VIOLATIONS – BOI REPORT

Criminal and Civil Penalties

Willfully providing false or fraudulent information OR

Willful failure to report complete or updated information

- Up to \$500 civil penalty for each day a violation continues **and**
- Up to \$10,000 in criminal fines, up to two (2) years in prison, or both

29

PENALTIES FOR UNAUTHORIZED DISCLOSURE OR USE

Criminal and Civil

- Unauthorized disclosure or use violations
 - Up to \$500 civil penalty for each day a violation continues **and**
 - up to \$250,000 criminal penalty, up to five (5) in years prison, or both
- If while violating another law of the United States or as part of a pattern of any illegal activity involving more than \$100,000 in a 12-month period,
 - Up to \$500,000 and/or
 - Up to ten (10) years in prison

30

FINCEN IDENTIFIER (ID)

- Unique ID that can be given in lieu of providing personal information
- Available for Reporting Companies, Beneficial Owners, & Company Applicants
- Only provide information once but must update the record when it changes

31

FINCEN IDENTIFIER (ID)

- FinCEN ID has no expiration or method of withdrawal
- Requested that FinCEN consider the concept of being able to “pause” a FinCEN ID to make it inactive

32

HOW TO SUBMIT BOI REPORT

- **Electronic Filing:**

- Beneficial Ownership Secure System (BOSS)
 - In development
 - Web form
 - Upload identification document
 - Immediate evidence
 - Form is expected to be released for 30-Day comment period by end of summer

33

PERSONAL IDENTIFIABLE INFORMATION (PII)

- Obligation to handle in secure manner
- Consider submitting passport instead of driver's license
- FinCEN ID

34

OFFICE OF FOREIGN ASSETS CONTROL (OFAC)

- Administers and enforces economic and trade sanctions
- Publishes list of Specially Designated Nationals (SDNs)
 - Search:
 - Entity and all assumed names
 - All beneficial owners
 - All company applicants



35

WHO CAN ACCESS BOI – PROPOSED RULE

- Federal agencies engaged in national security, intelligence, or law enforcement activity
- State, local, and Tribal law enforcement agencies as part of a criminal or civil investigation
- Foreign law enforcement agencies, judges, prosecutors, and competent authorities
- Financial institutions using BOI to facilitate compliance with customer due diligence (CDD) requirements with the consent of the reporting company
- Federal regulatory agencies acting in a supervisory capacity assessing financial institutions for compliance with CDD requirements
- Any U.S. Department of Treasury employee whose official duties require BOI inspection/disclosure or for tax administration

36

WHO CAN ACCESS BOI – PROPOSED RULE WHAT DOES CONGRESS THINK?

- “While we appreciate the time and effort you have put into the implementation of this critical law, **we have concerns that this proposed rule strays from congressional intent and erects unnecessary and costly barriers to accessing beneficial ownership information** that risk undermining the utility of the beneficial ownership directory.”
- “**We encourage you to** revise the rule to ensure it tracks closer to the text of the statute, **remove excessive barriers to accessing the directory by authorized recipients**, and enhance the utility of the directory.”

37

STILL TO COME

- Proposed Beneficial Ownership Information Reports – Comments submitted 3/20/2023
- Proposed Application for FinCEN ID – Comments submitted 3/20/2023
- Final Rule for Access to Beneficial Ownership Information (Comments submitted 2/7/2023)
- Revision of Customer Due Diligence Rule (BSA) (by 12/31/2024)
- Small Business Compliance Guide
- FAQs

38

STILL TO BE SEEN

- Accountability through Confirmation Act –
 - Would require FinCEN Director to be appointed by the President and confirmed by Senate.
- Protecting Small Business Information Act of 2023 –
 - Would require the Treasury Secretary to certify to Congress that all rules implementing the CTA are final and only then can any rule be implemented.

39

STILL TO BE SEEN

- National Small Business Association v. Janet Yellen et. al.
 - Federalism principles: the federal government is usurping powers over entity formation traditionally belonging to the states, in violation of the 9th and 10th amendments and constitutional principles of federalism.
 - Unreasonable searches and seizures and unconstitutional invasion of privacy: the requirement to report sensitive, personal information without any suspicion of criminal activity imposed on U.S. citizens under the CTA violates the 4th Amendment's protection against unreasonable searches and seizures, the 5th Amendment's protection against compelled self-incrimination, and the right to privacy reserved to people by the 9th Amendment.
 - Vagueness and due process: the CTA is vague because it requires information about "beneficial owners" and "applicants" that have no plain analogues in existing state entity laws. It is oppressive and creates new terms and definitions made up out of whole cloth which are not normally used in the entity formation process or in corporate or entity governance.

40

STILL TO BE SEEN

- [An Introduction to Beneficial Ownership Information Reporting Requirements – YouTube](#)

41

UNDER PRESSURE

- June 7, 2023 Letter from House Financial Services Committee Chairman Patrick McHenry (NC)

"We write today to express our concerns with the Financial Crimes Enforcement Network's (FinCEN) planned roll out to inform reporting companies of their forthcoming obligations to file beneficial ownership information with FinCEN. **Specifically, we believe that press releases are insufficient to ensure that the approximately 32.6 million small business that will be expected to comply in 2024 understand their upcoming responsibilities.**

"As you know, the impending Beneficial Ownership Information collection rule will go into effect January 1, 2024. **It is concerning that with six months until its effective date, FinCEN has yet to lay out a clear plan for engagement. It is highly unlikely that the 32 million small business owners know what FinCEN is let alone know to look for a press release on FinCEN's website.** As a result, there is a real possibility that these small businesses could be held civilly or criminally liable for noncompliance.

"To that end, we would like to better understand FinCEN's plans to educate small businesses."

42

UNDER PRESSURE

- June 7, 2023 Letter from House Financial Services Committee Chairman Patrick McHenry (NC)
 1. Compliance guides for reporting companies e.g., responsibilities
 2. Copy of any infographics that FinCEN plans to distribute
 3. Detailed report on FinCEN's timeline for the finalization of the rules
 4. Outline of the challenges FinCEN has encountered
 5. Detailed plan on how it will safeguard from scammers and criminals using the beneficial ownership information collection process to obtain sensitive information
 6. Outline of how FinCEN will field calls and remediate issues that may arise
 - 7. Detailed plan for reminder notifications for reporting companies that have not complied as the deadline approaches****
 8. Compliance guide for reporting company updates
 9. Detailed plan of outreach to states and local governments
- "Please respond no later than July 1, 2023."

43

UNDER PRESSURE -

- July 18, 2023 House Financial Services Committee Hearing
- Chairman Patrick McHenry (NC)
 1. Compliance guides for reporting companies e.g., responsibilities
 2. Copy of any infographics that FinCEN plans to distribute
 3. Detailed report on FinCEN's timeline for the finalization of the rules
 - 4. Detailed plan for reminder notifications for reporting companies that have not complied as the deadline approaches****
 5. Compliance guide for reporting company updates
 6. Detailed plan of outreach to states and local governments

44

A FEW NUMBERS

- 10,510,160 – total five-year average of expected initial report filings
- 12,880,908 – total five-year average of expected updated report filings
- 90 minutes – average burden of reporting for companies with simple structures
- 650 minutes – per response for companies with complex beneficial ownership structures
- 40 minutes – average burden for updates for companies with simple structures
- 170 minutes – per update for companies with complex beneficial ownership structures

45

STATES FOLLOWING COURSE

- New York – LLC Transparency Act (the “LLC Act”)
 - Domestic and foreign LLCs to submit BOI to Department of State (DOS)
 - Upon formation/registration and when filing amendments to formation/registration
 - Amend when any changes in BOI
 - Same exemptions as allowed in the CTA
 - Must claim the exemption via a signed statement by a member or manager
 - “Beneficial Owner” has same definition as in the CTA
 - Report:
 - Full legal name;
 - Date of Birth;
 - Business street address; and
 - Unique Identification number (as defined in the CTA)
 - DOS will list the full name of each beneficial owner in their public database

46

STATES FOLLOWING COURSE

- California
 - SB-738
 - Would require foreign corporations and foreign LLCs to report certain BOI to CA Secretary of State (SOS)
 - SB-594
 - Would require LLCs to report BOI on Statements of Information
- Massachusetts
 - HB 3566
 - Would require LLCs to disclose BOI to SOS

47



QUESTIONS?

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48