



CORPORATE TRANSPARENCY ACT

What You Need to Know & How We Can Help

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AGENDA

- Introduction
- Corporate Transparency Act
- Implementation
- What Comes Next
- How Capitol Can Help



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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.

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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



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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.



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FINCEN

Rulemaking

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



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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**).

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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.



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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

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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

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REPORTING COMPANIES

Exemptions (Continued)

- 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
- 12) insurance companies
- 13) state licensed insurance producers
- 14) Commodity Exchange Act registered entities
- 15) accounting firms

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REPORTING COMPANIES

Exemptions (Continued)

- 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
- 23) **inactive businesses**

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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.



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REPORTING COMPANIES

Exemption

Inactive Businesses

- 1) In existence on or before January 1, 2020;
- 2) Not engaged in active business;
- 3) Not owned by foreign person;
- 4) Not experienced change in ownership in preceding twelve-month period;
- 5) Not sent or received any funds greater than \$1,000 in preceding twelve-month period; **and**
- 6) Does not hold any assets.



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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
 - a) Reporting Company
 - b) Beneficial Owner(s)
 - c) Company Applicant(s) if formed after 12/31/2023



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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)



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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.



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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



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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

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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



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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

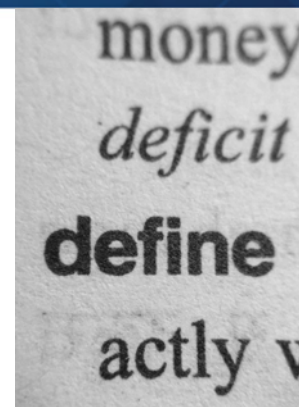


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COMPANY APPLICANT

FinCEN Guidance:

"This definition is designed to identify the individual who is responsible for the creation of a reporting company through the filing of formation documents, **and** the individual that directly submits the formation documents, if that function is performed by a different person, but it *reduces potential burdens by limiting the definition of company applicant to only one or two individuals.*"



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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



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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..."



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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

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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
 - *Proposed rule change: companies formed in 2024: 90 days to file BOI Report*

Updates and Corrections

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

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PENALTIES FOR REPORTING VIOLATIONS – BOI REPORT

Civil and Criminal 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



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PENALTIES FOR UNAUTHORIZED DISCLOSURE OR USE

Civil and Criminal Penalties

- 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

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FINCEN IDENTIFIER (ID)

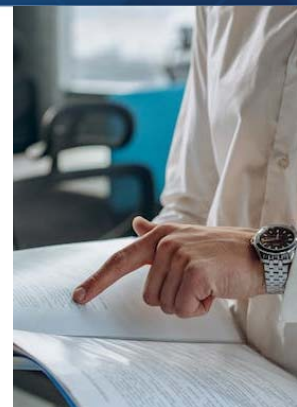
- Unique ID that can be used on BOI Reports in lieu of providing personal information to Reporting Companies
- Available for Reporting Companies, Beneficial Owners, & Company Applicants
- Provide information directly to FinCEN once but must update FinCEN when the information changes



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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



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HOW TO SUBMIT BOI REPORT

Electronic Filing:

- Beneficial Ownership Secure System (BOSS)
 - In final stage of development
 - Web form / Fillable PDF
 - Upload identification document
 - Receipt number issued upon submission



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PERSONAL IDENTIFIABLE INFORMATION (PII)

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



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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

(Continued on next slide)



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WHO CAN ACCESS BOI – PROPOSED RULE

- 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



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STILL TO COME

- Beneficial Ownership Information Report – Final comments submitted 10/30/2023
- Application for FinCEN ID – Final comments submitted 10/30/2023
- Beneficial Ownership Information Reporting Deadline Extension for Reporting Companies Created or Registered in 2024 (Comments submitted 10/30/2023)
- Final Rule for Access to Beneficial Ownership Information (Comments submitted 2/7/2023)
- Revision of Customer Due Diligence Rule (BSA) (by 12/31/2024)
- More FAQs

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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.



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STILL TO BE SEEN

Protecting Small Business and Prevent Illicit Financial Activity Act of 2023

- Would allow reporting companies created after the effective date to have 60 days to file the initial BOI Report
- Would allow reporting companies created before the effective date to have until January 1, 2026 to file initial BOI Report
- Would bar FinCEN from allowing the option to respond “unknown” or “unable to identify”



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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

(Continued on next slide)

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STATES FOLLOWING COURSE

New York – LLC Transparency Act (the “LLC Act”)

- “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

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HOW CAPITOL SERVICES CAN HELP

Acting as Company Applicant

- Capitol Services employees will act as one of the two company applicants for all companies for which we file the formation
- All formation filers will be getting a FinCEN ID
- The FinCEN ID of the filer will be with evidence of the formation filing

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HOW CAPITOL SERVICES CAN HELP

Filing Beneficial Ownership Information Reports

- Dedicated filing team
- Initially, we will be submitting PDF forms to FinCEN
- We will eventually shift to filing using API technology
- Evidence of filing will be a submission/filing number



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HOW CAPITOL SERVICES CAN HELP

EIN Applications

- Filing team made up of senior CSRs
- SS-4 form and authorization letter provided that includes a specific third-party designee
- One application per responsible party (by SSN) can be filed per day
- Evidence will be EIN number
- IRS will send information to the company by mail



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HOW CAPITOL SERVICES CAN HELP

Business Compliance Manager

- Secure document upload portal
- Secure environment to send documents containing personally identifiable information (PII)
- Use strongly encouraged to prevent PII from being sent by email
- Our team will move any PII received via email to the portal and delete emailed files



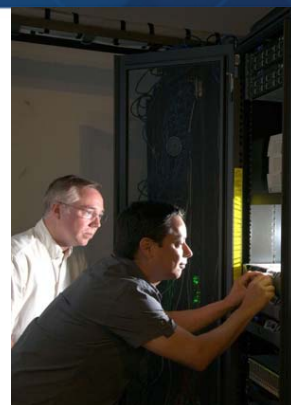
CAPITOL  BCM

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HOW CAPITOL SERVICES CAN HELP

Security

- Virus and malware scan of all documents submitted via portal
- Ongoing consultation with a third-party cyber security company
- Any filing documentation containing PII stored in portal



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HOW CAPITOL SERVICES CAN HELP

Filing Packages

- Two packages
 - Formation + BOI Report
 - Formation + EIN Application + BOI Report
- Discounted service fees
- Fees billed upon completion of formation; no surprise invoices later
- Packages allow us to associate BOI report filing with originating law firm

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HOW CAPITOL SERVICES CAN HELP

<u>SERVICE</u>	<u>SERVICE FEE</u>
Formation Filing	\$100
BOI Report Filing	\$120
EIN Application Filing	\$120
Formation Filing + BOI Report Filing	\$200
Formation/EIN/BOI Report Filing Package	\$300

**Fees exclude statutory, online access, correspondent, and delivery fees.*

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QUESTIONS?

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