

Accounting for Success

What You Need to Know about the Corporate Transparency Act



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"Business owners and their advisors need to be familiar with these changes."

In 2021, Congress amended the Bank Secrecy Act to task the Financial Crimes Enforcement Network (FinCEN) with establishing a database of the Beneficial Ownership Information (BOI) of companies. According to the FinCEN's FAQs, this is "to make it harder for bad actors to hide or benefit from their ill-gotten gains through shell companies or other opaque ownership structures." It's estimated that about 32.6 million businesses will be required to comply, and the FinCEN has been doing all it can to bring awareness to the requirement, as no implementation delay appears in sight.

The FAQ site lists 23 reporting exemptions including, banks, credit unions, insurance companies, accounting firms, public utilities, tax-exempt entities, inactive companies, certain publicly traded companies, and "large operating entities." Large operating entities are companies that meet all three of the following: (a) employs more than 20 people in the U.S., (b) had gross revenue of over \$5 million on the prior year's tax return, AND (c) has a physical office in the U.S.

The reportable beneficial owner(s) are those who either exercise substantial control over the reporting company, or who own or control at least 25% of the company's interests. Substantial Control can be achieved by (a) being a senior officer (president, CFO, general counsel, CEO, COO etc), (b) having authority to appoint or remove certain officers, (c) being an important decision-maker, or (d) "having any other form of substantial control". More information about each of these terms can be found under Section D of the FinCEN's FAQs. The FinCEN's Small Business Compliance Guide lists four exceptions to meeting the Beneficial Owner definition including minor children; Nominees, Intermediaries, Custodians or Agents; employees (i.e., those who are not officers and who derive economic benefit only through employment); and Inheritors.

Foreign and domestic companies forming or registering to do business in a state on or after January 1, 2024 have only 30 days from date of receipt of a registration's effectiveness to report. Companies already in existence prior to January 1, 2024 have until January 1, 2025 to file. Lastly, companies needing to update a prior report must do so within 30 days of the date on which the change occurred. Common triggers

include changing the business name, a change in Beneficial Owners (like a new CEO), a sale of ownership creating a new 25% owner, or any change to a beneficial owner's name, address. For example, a newly married beneficial owner who changes their name must submit the BOI update within 30 days of the name change. If a beneficial owner dies, the 30 days start from the date the estate is settled. Recall the exception to BOI reporting for minor children; once the child reaches the age of majority, the report would be required within 30 days of their birthday.

While the company is the filer, the first two applicants (those directly responsible for formation) are reported including their name, address, date of birth and a copy of their passport or driver's license. The first is the individual who submitted the registration; a second applicant could exist if the first applicant was directed by them to submit the application. For example, an accountant or lawyer could be the first applicant if they directly filed the state registration or be the second applicant if they supervised a member their staff or engaged another party who was the first applicant.

Statutory Penalties can be significant; willful failures to timely file initial or updated reports are fined at \$500 per day up to \$10,000 and imprisonment for 2 years. Currently a 90-day grace period is offered for missing the deadline, though the FAQs note this is a result of the requirement's newness so it should not be assumed to be available indefinitely.

An IRS-assigned Taxpayer ID Number (i.e. an EIN) must be obtained prior to submission so care should be taken to provide enough time to obtain one prior to the reporting deadline. There is no cost to file and reports must be submitted electronically on the FinCEN's secure website.

Business owners and their advisors need to be familiar with these changes. In fact, some states and insurance carriers advise that an advisor's submission of the form could be an Unauthorized Practice of Law, so we recommend consulting your attorney and insurance carrier soon for more information.