

AN OUTLINE OF THE FEDERAL CORPORATE TRANSPARENCY ACT AND NEW YORK LAWS

As part of the Anti-Money Laundering Act of 2020, the federal Corporate Transparency Act (“CTA”) was enacted. The Financial Crimes Enforcement Network (“FinCEN”), a bureau of the U.S. Department of Treasury, has issued rules and regulations to implement this statute, which took effect on January 1, 2024. The CTA and its implementing rules require certain entities to report their beneficial ownership information (“BOI”) to FinCEN—the federal agency collects data about financial transactions to enforce the U.S. laws against money laundering and terrorist financing.

Below is a summary of pertinent sections of the CTA and the implementing FinCEN regulations that apply to certain entities organized or operating in the United States, which may include your current entity and also entities that may be formed in the future.

1. An entity required to report BOI is called a “Reporting Company.” Entities that are in existence as of January 1, 2024 must file their initial report on or before January 1, 2025. Entities created in 2024 that fit the definition of a Reporting Company must file their initial report no later than 90 days after receiving actual or public notice that their company’s creation or registration is effective, and entities created on or after January 1, 2025 that fit the definition of a Reporting Company must file their initial report no later than 30 days after creation.
2. **A Reporting Company is defined** as
 - a. any type of **domestic entity** (corporation, limited liability company, partnership, etc.) that is created by filing a registration document (such as articles of incorporation or articles of formation) with one of the 50 state governments (for example, New York Secretary of State’s office), or
 - b. any type of **foreign entity** (registered under the laws of other countries) has registered by filing a registration document (authorization to do business as a foreign entity) with one of the 50 state governments for conducting business in one or more states
3. **Exempt Entities.** The CTA and its implementing regulations identify categories of entities that are exempt from the requirement to file a BOI report. Exempt entities that do not have a reporting obligation under the CTA include:
 - a. Entities that have substantial business activities are exempt. Any entity that meets all of the three following criteria will be considered to have “substantial business activities”:
 - i. Employs more than 20 full time employees in the United States (employees who work for at least 30 hours per week); **AND**
 - ii. Has a physical office in the United States; **AND**

- iii. Had at least \$5.0 million of gross revenue, defined as gross receipts or sales (net of returns and allowances), in the preceding tax year (that is, it declared at least this much on its last federal corporate income tax return)

It should be noted that this exemption does not apply to an entity that fails to meet one or more of these three criteria. Therefore, an entity that employs 20 or fewer full-time employees in the United States, even if it earns more than \$5.0 million in gross revenue, does not qualify for this exemption. Similarly, if the entity employs 21 or more full-time employees in the United States but has less than \$5.0 million of gross revenue, it will not be exempt from reporting BOI. Finally, if an entity meets these two requirements but does not have a physical office in the U.S., that entity is not exempt from filing its BOI.

- b. Publicly trading entities AND entities (subsidiaries) that are owned directly or indirectly by a publicly trading entity.
- c. Banks and Bank related entities (representative officer or bank holding company) that are licensed by a state or the federal government. These entities are exempt because they are under the supervision of federal and/or state authorities including FinCEN.
- d. Entities involved with money, investment, and/or securities (i.e., entities that are licensed by a government entity).
- e. Non-Profit entities that have been approved by the IRS as exempt from taxation under Section 501(c) of the Internal Revenue Code.
- f. Inactive entities (i.e. “paper companies”), if they meet all of the following criteria—
 - i. were created more than one (1) year prior to January 1, 2024—they were created before January 1, 2023, AND
 - ii. are not engaged in any active business, AND
 - iii. are not owned by a foreign person (not an American citizen or a permanent resident), whether directly or indirectly, AND
 - iv. do not hold any type of assets (including ownership interest in another entity), AND
 - v. over the preceding 12 months, their ownership has not changed OR they did not send or receive more than \$1,000 from any source through a financial account or accounts in which such entities or their affiliates own

This exemption is only limited to paper companies that were not created for nefarious activities such as hiding assets or funding illegal acts.

- 4. **Where to Report BOI**. Entities that are required to file BOI reports may do so online or by downloading and completing a form and submitting the form:
 - a. A BOI can be filed online at [BOI E-FILING \(fincen.gov\)](https://www.fincen.gov/boi-e-filing).

- b. A BOI can also be filed as a PDF document at [BOI E-FILING \(fincen.gov\)](https://www.fincen.gov/boi-e-filing).

A parent company may not file a single BOI report on behalf of all subsidiary companies. Each entity must file its own BOI report.

5. **BOI Reports Content.**

- a. A Reporting Company must report the following:

1. The full legal name of the Reporting Company;
2. Any trade name or “doing business as” name of the Reporting Company;
3. A complete current street address (not a P.O. Box);
4. The State, or foreign jurisdiction of formation of the Reporting Company;
5. For a foreign reporting company, the country where such company first registers; and
6. The Internal Revenue Service (IRS) Taxpayer Identification Number (TIN) (which term includes Employer Identification Number (EIN), or other identification number issued by the IRS for tax matters) of the Reporting Company, or where a foreign Reporting Company has not been issued a TIN, a tax identification number issued by a foreign jurisdiction and the name of such jurisdiction;

- b. For every individual who is a beneficial owner of such reporting company (“beneficial owner” is defined as “any individual who, directly or indirectly, either exercises substantial control (president, CEO, etc.) over such reporting company or owns or controls at least 25 percent of the ownership interests of such reporting company” and the regulations describe the indicators of “substantial control”):

1. The full legal name of the individual;
2. The date of birth of the individual;
3. A complete current address consisting of the individual’s residential street address;
4. A unique identifying number and the issuing jurisdiction from one of the following documents:
 - a. A non-expired passport issued to the individual by the United States government;
 - b. A non-expired identification document issued to the individual by a U.S. State or local government for the purpose of identifying the individual;
 - c. A non-expired driver’s license issued to the individual by a U.S. State; or
 - d. A non-expired passport issued by a foreign government to the individual, if the individual does not possess any of the documents described in paragraph (a), (b), or (c); and
5. A legible copy of the document (for a passport, the page with an individual’s data).

6. **FinCEN Retention of BOI Reports.** FinCEN is authorized to retain BOI reports of any entity for five (5) years after the entity is no longer in existence.

7. **Third Parties** Others, such as attorneys or accountants or corporate filing services, can file on behalf of an entity if the reporting company has authorized that person to act on its behalf.
8. **Change in Information Submitted by a Reporting Company, Including Concerning An Entity That Becomes Exempt or is No Longer Eligible for Exemption, and Correction of Inaccuracies.** An entity that has filed a BOI must submit an updated BOI if information has changed or if an inaccuracy in information previously submitted is discovered. If an entity that filed a BOI Report subsequently becomes exempt (for example, if its number of full-time employees increases to more than 20), it should file an updated report that states that it is now exempt. Similarly, if an entity loses its exemption (for example, because of a decrease in the number of full-time employees to less than 21), it must file an updated report and supply all information required for a BOI report.
9. **Grace Period (Safe Harbor)** Reporting Company has 30 days after a change in information or upon discovery of inaccuracy in the information provided to update the BOI filing and/or to correct an error or errors on its BOI without any penalty.
10. **Penalty for Failure to Report.** The CTA civil penalty for failure to report BOI is \$500 per day up to \$10,000, or imprisonment for not more than 2 years or both a penalty and a term of imprisonment. Only when FinCEN imposes penalties, we can know the severity of penalties FinCEN will impose on entities that fail to file a timely report.
11. **Penalties for Obtaining and Using BOI Information without Authorization.** The penalties for obtaining (through any means) and using information that is on a BOI without authorization is severe. The penalty for each day that the violation continues is \$500 up to \$250,000 and imprisonment of up to five (years) or both.

BOI reporting is solely for FinCEN to enforce anti-money laundry laws and other laws that prohibit financial crimes. As such, the penalties for abusing BOI reports is significant.