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Frequently Asked Questions - Corporate Transparency Act

DISCLAIMER: This outline is a general guide. Be sure to contact an attorney if you have questions or specific issues that need to be addressed.

New federal reporting requirements for many non-public (including small) businesses went into effect on January 1, 2024, requiring disclosures of information related to owners, locations, and other company details. Our blog post features some quick key details about the law, but as expected, a complicated new law with obligations for small businesses is going to lead to some necessary questions. This list of FAQs can hopefully clear some confusion up.

For more context, the final rule is estimated to affect more than 32 million entities in the first year of reporting. It was issued under the Corporate Transparency Act by the Financial Crimes Enforcement Network known as FinCEN within the US Department of Treasury. It will require most corporations, LLCs, and other entities created in or organized to do business in the US to report information about their "beneficial owners" – defined below among other details.

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1. **When is the deadline to complete the filing and updates?**

Companies created or registered before January 1, 2024, will have one year to file their initial reports. Companies created in 2024 will have 90 days to comply. Then in 2025 companies will have 30 days to comply after formation.

Every time your company has a change to beneficial owners, you must make updates to the filing within 30 days of a change.

2. **Who must file and what must be included in the filing?**

Every entity not exempt from registration (see question 6 below) must file in their report the following:

- The full legal name or trade name (DBA) of the company;
- Its beneficial owners and personal identifying information pertaining to them (as well the information around individuals submitting the filings). See details around this in question 2;
- a complete current address for the company and each owner;
- the jurisdiction where the company is formed/registered (state, tribunal or foreign place);
- the company's EIN;
- potentially other details.

See Page 37 of the FinCEN small business guide for more details about what should be included in the filing and important helpful info for small businesses to comply.

3. **Who/what is a beneficial owner?**

In general, a beneficial owner is an individual who owns or controls at least 25 percent of a company or has substantial control over the company. Thus, someone might qualify as a beneficial owner through substantial control, ownership interests, or both. A company can have multiple beneficial owners, and could include upper management level employees who make major decisions in the company, meaning an individual required to report as a beneficial owner might not actually be an "owner" of the company. You will not be required to report the reason that someone is a beneficial owner.

This FAQ sheet from FinCEN refers specifically to what beneficial ownership information applies and should be sent in a report.

4. **How do you determine "substantial control" in determining if someone is a beneficial owner that you have to report?**

The following constitute "substantial control" for determining if someone is a beneficial owner. Only one of these must apply for someone to be considered to have substantial control:

   a. the individual is a senior officer;
   b. the individual has authority to appoint or remove certain officers or a majority of directors of the reporting company;
   c. the individual is an important decision-maker; or
   d. the individual has any other form of substantial control over the reporting company.

See Page 17 of the FinCEN BOI small business guide for more details about what constitutes substantial control.

5. **Who/What is a company applicant?**

A company applicant is an individual who directly files or is primarily responsible for the filing of the document that creates or registers the company. Each company reporting will have at least one company applicant and cannot have any more than two. It cannot be a company or entity – it must be an individual. This can be someone internal to the company or an accountant, attorney, etc. The FinCEN small business guide (referenced above too) provides more details around the company applicant process, and some examples of different scenarios.

6. **But I'm just a single owner business, does this law apply to me too?**

Yes, even single-member LLCs are required to comply and report, unless they qualify for one of the exceptions described in Question 6 (which requires certain revenue and employees).

7. **Is there any company or entity that doesn't have to comply?**

There are 23 specific types of companies/entities exempt from having to report under this rule. They include:

- publicly traded companies,
- insurance companies,
- banks, and
- tax-exempt entities (like 501(c)(3)s).
- additional exemptions

Most exemptions you will see are because they're obligated to other types of reporting and ownership requirements. For example, publicly traded companies are required to submit and make public annual and quarterly reports that list specific ownership details. It's likely that exempt organizations will still have to make a note in the system that they are exempt, but because the system is not yet live, it is not certain what this will fully entail. **Most small businesses DO have to register.**

Additionally, "large operating companies" are exempt from reporting if:

- they have more than 20 full-time employees,
- a physical operating presence in the US, **and**
- more than $5 million in gross receipts or sales as shown on the company's previous year's federal tax return.

These companies must meet ALL THREE criteria to be exempt. And if any of those three items changes they must register.

Read more about exempt organizations here:
https://www.wolterskluwer.com/en/expert-insights/the-23-exemptions-from-the-corporate-transparency-act

8. **What happens if my company does not submit its report by the deadline or fully comply?**

The law outlines civil and criminal penalties for the "willful failure" to 1, completely report or update beneficial ownership information to FinCEN, 2, to provide false or fraudulent beneficial ownership information. This could include up to $500 in financial penalties for each day that the violation continues, or criminal penalties including imprisonment for up to two years and/or a fine of up to $10,000. There are also penalties for encouraging another to provide false or incomplete reports.

9. **Where will this information be stored?**

According to FinCEN, this information will be stored in a heightened level of secure databases only accessible under specific circumstances (for example, states will only be able to access it with a court order). This information is not generally available to the public.

10. **Are there any other resources I can find more about the law?**

Here are a few helpful places that may provide more insight and keep you updated as changes occur.

- Small Entity Compliance Guide from FinCEN
- Read the full final rule here
- US Department of Treasury's press release gives a good overview of the purpose of the CTA
- Our blog post on the CTA
- Most attorneys, included Trellis Legal, offer services around this. Be sure to talk to an attorney about your specific business and compliance.