

# Corporate Transparency Act FAQs

## 1. What is the Corporate Transparency Act?

The Corporate Transparency Act (CTA) is intended to give law enforcement and other government agencies more tools to fight corruption, terrorism, money laundering, the flow of drug money, and to protect national security. The CTA does this by giving the necessary government agencies access to beneficial ownership information of corporations, limited liability companies, and similar entities. The beneficial ownership information is collected and accessed through the Financial Crimes Enforcement Network (FinCEN).

## 2. Who is a beneficial owner?

A beneficial owner is an individual, who directly or indirectly, exercises substantial control over the entity or owns or controls 25% or greater ownership interest of the entity. There are a few exceptions, such as the minor children of a beneficial owner or a person that is solely an employee of the reporting company.

## 3. What is FinCEN?

FinCEN is the acronym for the Financial Crimes Enforcement Network. It's a bureau within the U.S. Treasury Department that enforces anti-corruption and anti-money laundering laws. It also plays a role in safeguarding the financial system and national security.

## 4. When does the CTA take effect?

The CTA took effect on January 1, 2024.

## 5. What companies must report beneficial ownership information under CTA?

The CTA creates the concept of a reporting company. The term "reporting company" means a corporation, limited liability company, or other similar entity that's either created by the filing of a document with a secretary of state or a similar office of a state or Indian tribe, or is formed under the law of a foreign country and registered to do business in the United States by the filing of a document with a secretary of state or a similar office of a state or Indian tribe. All reporting companies must provide beneficial ownership information to FinCEN unless they meet an exemption.

## 6. When would a company be exempt from beneficial ownership reporting requirements?

There are a multitude of entities that are excluded from the term reporting company and are exempt from the reporting requirements. The companies exempted from the reporting requirements tend to have one thing in common—they're generally already subject to strict federal or state regulation. For example, financial institutions have to be registered and are subject to government oversight. The same applies to companies registered with the Securities and Exchange Commission, state insurance regulators, and companies that operate in regulated industries, such as utilities. In these cases, the company's beneficial owner information would already have been provided to the government as part of the regulatory process. Visit our Corporate Transparency Act resource page for a more complete list of exemptions at <https://www.fincen.gov/boi/small-business-resources>.

## 7. How is the beneficial ownership information reported to FinCEN?

Information is reported to FinCEN via a secure filing system available via FinCEN's beneficial ownership information (BOI) eFiling website. EAGLE & FEIN, P.C. offers a BOI filing service and can assist in preparing and filing your BOI reports with FinCEN.

## 8. How soon does a company have to submit a report to comply with the new law?

Existing reporting companies (entities formed prior to January 1, 2024) must file initial report with FinCEN no later than January 1, 2025. Newly formed entities must file their initial report within 90 calendar days after the earlier of: the date on which the reporting company receives actual notice that its creation has become effective or the date on which a secretary of state or similar office first provides public notice, such as through a publicly accessible registry, that the domestic reporting company has been created.

**9. What information must a company provide for each beneficial owner?**

The following information must be provided for each beneficial owner and the applicant: (i) full legal name; (ii) date of birth; (iii) current residential or business street address; and (iv) a unique identifying number from an acceptable identification document, along with a clearly scanned image of the identifying document. In the alternative, a FinCEN identification number can be provided.

**10. What is a FinCEN identification number?**

Upon request, FinCEN will issue a unique identifying number to an individual who has provided all the required beneficial owner information. Thereafter, a reporting company or applicant can provide the unique identifying number to FinCEN instead of providing all the personal information each time a new entity is required to file a BOI report with FinCEN.

**11. What is an acceptable identification document for purposes of the statute?**

Acceptable identification documents include (i) a non-expired U.S. passport; (ii) a non-expired identification document issued by a state, local government, or Indian tribe; (iii) a non-expired driver's license issued by a state; or (iv) if the individual lacks all the foregoing documents, a non-expired foreign passport.

**12. What if beneficial ownership information changes after submission to FinCEN?**

If the information reported to FinCEN changes, the reporting company will need to submit updated information. The deadline for submitting the update is 30 days after the date the change occurred.

**13. What if I mistakenly provide incorrect information to FinCEN?**

A person who provides incorrect information but is not attempting to evade the reporting requirements is obligated to submit a corrected filing in 30 days but has a safe harbor if they correct the information within 90 days.

**14. Who will have access to the beneficial owner information?**

With limited exceptions, the information may only be disclosed to government law enforcement, prosecutors, the courts, and national security agencies. Financial institutions may have access to the information for due diligence purposes with consent of the reporting company. In some cases, the information may be disclosed if requested by a federal agency to assist the law enforcement, courts, prosecutors, or judges of a foreign country. More specific information on the parties entitled to the information will be established in the rules promulgated by the Treasury Department.

Beneficial ownership information provided to FinCEN is confidential and may not be publicly disclosed by any government representative or the officers and employees of financial institutions that have access to the data. Unauthorized disclosure of beneficial ownership information is a crime punishable by up to five years imprisonment and a \$250,000 fine.

**15. How long does FinCEN retain the beneficial owner information?**

FinCEN is required to maintain the information until five years after the reporting company terminates or is otherwise dissolved.

**16. Are there any penalties for non-compliance with the CTA reporting requirements?**

Yes, failure to provide complete, accurate and timely information, or willfully providing false or fraudulent beneficial owner information, can result in harsh civil and criminal penalties. Civil penalties may include a fine of \$500 for each day the violation continues. Criminal violations may be punished by up to two years imprisonment and a \$10,000 fine.

**17. Do the CTA reporting obligations apply to non-profit entities?**

There is an exemption for certain tax-exempt entities in 31 CFR § 1010.380(c)(2)(xix). Whether a particular non-profit entity falls within the exemption must be determined in consultation with legal counsel.

**18. To qualify for the large operating exemption, do you need to meet all three of the listed criteria (20 FTEs, \$5 million revenue and physical location)?**

The large operating company exemption requires the company to satisfy all three requirements set forth in 31 CFR § 1010.380(c)(2)(xxi). Note that a company cannot qualify for the large operating company exemption at formation because it has not filed a tax return with \$5 million in revenue for the previous year.

**19. Is the subsidiary of exempted entity also exempt entity?**

Wholly owned subsidiaries of exempt entities are also generally exempt from reporting but there are exceptions. See 31 CFR § 1010.380(c)(2)(xxii). It's best to consult with legal counsel to make the determination in a particular case.

**20. Does the registered agent name need to be reported?**

The registered agent information is not required for reporting under the CTA. If the registered agent filed the documents, company applicant information for the appropriate registered agent employee would need to be reported.

**21. How does a limited liability company (LLC) that is 100% owned by another LLC report?**

It would have to trace the beneficial owners up through the hierarchy to any individual that owns 25% or more of the entity or exercises substantial control.

**22. Does a domestic reporting company have to report every state in which it is qualified to do business?**

For domestic reporting companies, qualification in multiple states generally would have no impact on the reporting requirements. Such a company would generally only have to report the state of formation.

**23. Do you have to file anything if an entity is exempt?**

Generally, if a company qualifies for an exemption, then it does not need to file any type of report to FinCEN. However, if the exemption later no longer applies, then the company would have to report. Likewise, if a reporting company later falls within an exemption, it will have to file an update report to indicate that it is newly exempt.

**24. Will the CTA require annual filing, such as is done with the states, or do only changes need to be reported after filing the initial report?**

After the initial report has been filed, updated reports will only need to be filed if information changes. There is no annual reporting requirement.

**25. Is a sole proprietor who has a doing business as (DBA) a reporting company?**

Unless state law requires the sole proprietorship to be formed by filing a document with the secretary of state, a sole proprietorship is generally not subject to the Act.

**26. Do we know which corporate officers FinCEN considers as having "substantial control?"**

Generally, it would depend on the facts and circumstances of each officer's role. The criteria for establishing whether an individual has substantial control are found in 31 CFR § 1010.380(d)(1). Such a determination should be made in consultation with legal counsel. Most officers and board members would be considered to exercise substantial control and thus would be under a duty to report.

**27. What if a Revocable Living Trust is the owner of a Reporting Company?**

An individual may directly or indirectly own or control an ownership interest of a reporting company through any contract, arrangement, understanding, relationship, or otherwise, including a trust.

The beneficial owners who would need to report their information to FinCEN if ownership is held by a trust are as follows:

- A trustee of a trust or other individual (if any) with the authority to dispose of trust assets;
- A beneficiary who:
  - Is the sole permissible recipient of income and principal from the trust; or,
  - Has the right to demand a distribution or withdraw substantially all the assets from the trust; or a grantor or settlor who has the right to revoke the trust or otherwise withdraw the assets of the trust.

**28. What if the company is an ESOP company?**

For entities that are owned 25% or more by an ESOP, the trustee of the ESOP Trust is likely a beneficial owner for CTA reporting purposes. Unless there are very few employees of the participating employers in the ESOP, it is unlikely that any individual plan participant would own more than 25% of the allocated shares of an ESOP solely through the plan, so ESOP participants are likely not subject to beneficial ownership reporting (unless they exert substantial control over the entity in some other way; i.e., an officer, board member, or holding warrants).

Issuance of interest-replacement warrants to selling shareholders in the sale of shares to an ESOP is common. Selling shareholders may be considered beneficial owners if they were issued more than 25% of the fully diluted equity of the entity in the exercise of warrants. Selling shareholders should consider allocation of shares to their participant accounts in the ESOP as well.

Most ESOP Companies will be exempt from reporting, however, as many ESOP Companies qualify for the large-entity exemption: Reporting Companies with more than twenty (20) employees which also filed a federal income tax return in the previous year showing more than \$5,000,000.00 in gross receipts or sales are not required to report under the CTA.

**29. What if the applicant is an entity like a law firm? How can the entity submit an identification document?**

By definition, a company applicant is an individual. It would be the individual within the company that meets the definition.

**30. Can the physical office be a virtual office provider address?**

According to the regulations, it appears that such a virtual office address does not satisfy the requirement for company address.

**31. Do we need to report company applicant information for a company formed before January 1, 2024?**

Companies in existence before January 1, 2024, do not have to report company applicant information.

**32. How do I determine the date of creation or registration of an entity? Is it the effective date or the filed date?**

FinCEN has indicated that “the date of creation or registration for a reporting company is the earlier of the date on which: (1) the reporting company receives actual notice that its creation (or registration) has become effective; or (2) a secretary of state or similar office first provides public notice that the domestic reporting company has been created or the foreign reporting company has been registered.” It is the earlier of the above two dates from which the CTA reporting deadline begins.

**33. Is EAGLE & FEIN, P.C. considered a company applicant?**

The CTA indicates that reporting companies formed or registered on or after January 1, 2024, must report up to two company applicants. The company applicants relate to the formation of the entity, rather than the individuals who submit the BOI report.

The first company applicant is the “direct filer”—the individual who directly filed the document that created or registered the reporting company. This is the individual that physically or electronically filed the document with the secretary of state or similar office.

The second possible company applicant is the individual who was primarily responsible for directing or controlling the filing of the creation or registration document. The second company applicant is required if the “direct filer” is not the same individual who directed or controlled the filing.

When assisting with new formations on or after January 2, 2024, EAGLE & FEIN, P.C. will provide with the evidence the FinCEN ID of the EAGLE & FEIN, P.C. employee who filed the formation document with the secretary of state. While EAGLE & FEIN, P.C. will not make legal determinations as to who the company applicants are, the reporting company may use this FinCEN ID as the direct filer company applicant when filing a BOI report.