



Understanding the Corporate Transparency Act

Need-to-Know Action Steps

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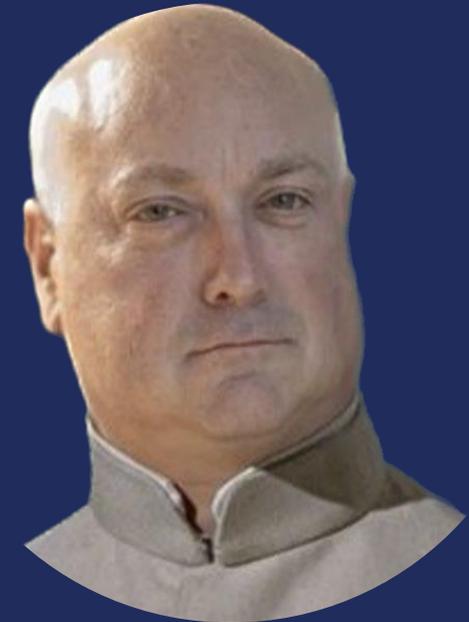
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Your presenter

- Formerly Co-Chair, Silicon Valley Technology Transactions Group, Weil, Gotshal & Manges and then for McCutchen Doyle (now Morgan Lewis)
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Agenda

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- 02 Who needs to report?
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What's the Corporate Transparency Act?

H. R. 6395—1217

TITLE LXIV—ESTABLISHING BENEFICIAL OWNERSHIP INFORMATION REPORTING REQUIREMENTS

Sec. 6401. Short title.

Sec. 6402. Sense of Congress.

Sec. 6403. Beneficial ownership information reporting requirements.

SEC. 6401. SHORT TITLE.

This title may be cited as the “Corporate Transparency Act”.

SEC. 6402. SENSE OF CONGRESS.

It is the sense of Congress that—

(1) more than 2,000,000 corporations and limited liability companies are being formed under the laws of the States each year;

(2) most or all States do not require information about the beneficial owners of the corporations, limited liability companies, or other similar entities formed under the laws of the State;

(3) malign actors seek to conceal their ownership of corporations, limited liability companies, or other similar entities in the United States to facilitate illicit activity, including money laundering, the financing of terrorism, proliferation financing,

- Enacted in January 2021 to combat money laundering, tax evasion, drug trafficking, and other illegal or abusive activities by “shell” or “front” companies*
- Mostly impacts smaller and non-operating companies
- A few terms:
 - CTA** = Corporate Transparency Act
 - BOI** = Beneficial Ownership Information
 - FinCEN** = Financial Crimes Enforcement Network, part of the U.S. Department of the Treasury

* For more information on the CTA's background, see the [Rule Fact Sheet](#)

CTA Overview

- Companies that meet certain criteria must submit BOI reports to FinCEN
- BOI reports identify individuals associated with a reporting company
- There are numerous (23) exemptions
- For companies formed before January 1, 2024, the initial filing deadline is January 1, 2025*
- BOI reports are filed electronically (no fee) through FinCEN's secure online tool
- FinCEN provides helpful guidance, and the tool is fairly easy to use
- Being challenged in court but still in effect

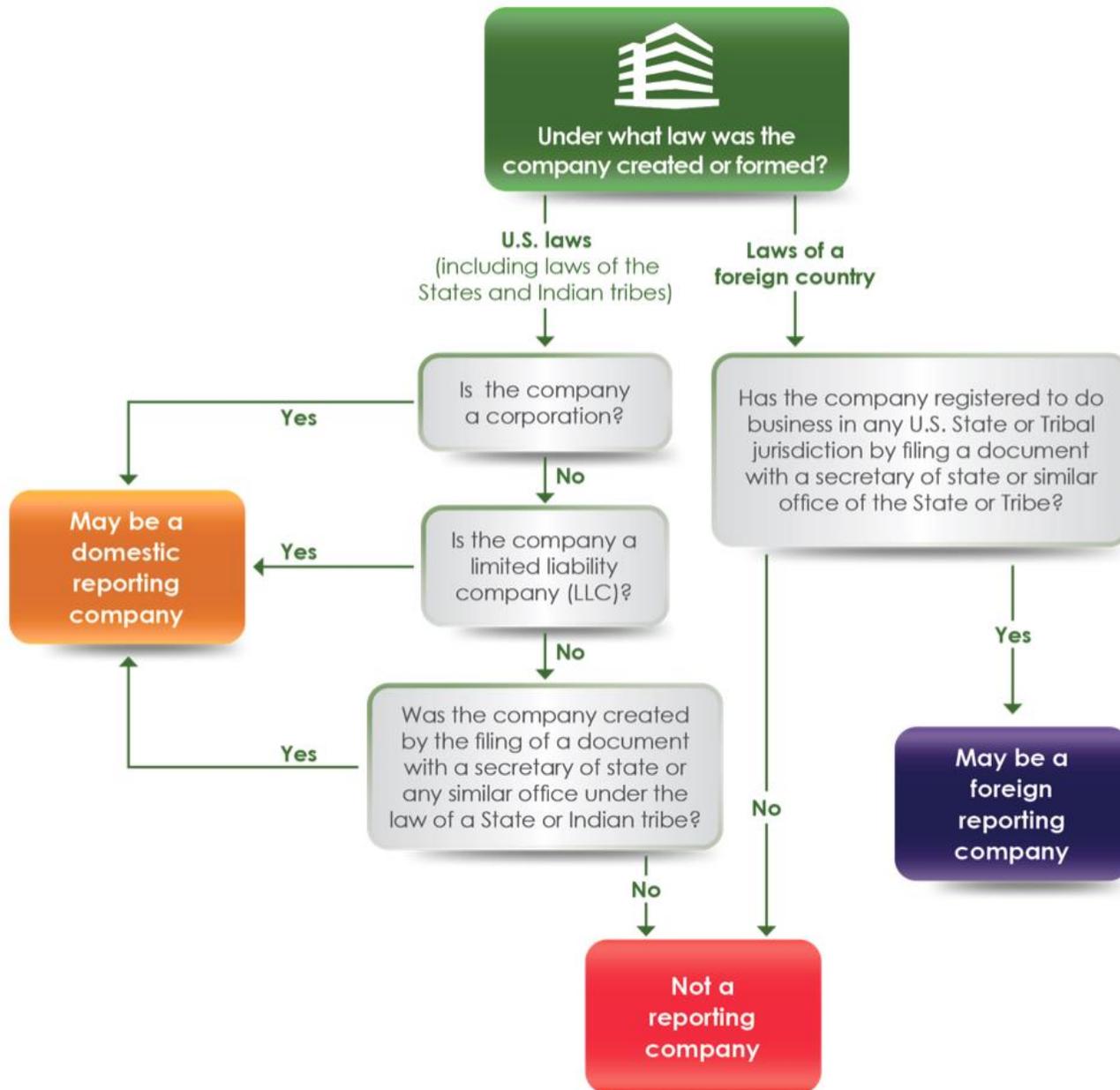
* Companies formed/registered in 2024 must file within 90 days of formation/registration

Companies formed/registered in 2025 or later must file within 30 days of formation/registration

Companies that existed at any time on or after Jan 1, 2024 must file even if they have been dissolved or are no longer in business



Who needs to report?



- Corporations and LLCs
- Other entities created by a filing with a secretary of state or similar body
- Non-US entities registered to do business in the US
- Not reporting companies:
 - general partnerships
 - sole proprietorships
 - donative trusts

Exemptions

Many early-stage companies will not qualify for any exemptions

Exempt companies do not file, but should document why they are exempt (including subsidiaries)

Include:

- Public companies
- “Large operating companies”:
 - > 20 full time US employees
 - > \$5M in US gross revenue (as shown on filed tax returns)
 - operating presence at a physical office in the US – no PO boxes
- Non-Profits
- Highly regulated businesses
 - Insurance companies
 - Broker/dealers
 - Banks and Credit Unions
 - Accounting firms
- VCs and PE firms and advisors
- Wholly owned/controlled subsidiaries of most exempt entities

What to report?



- A reporting company needs to report information about its “beneficial owners”
- A beneficial owner is any individual who:
 - Exercises “substantial control” over a reporting company or
 - Owns or controls 25% or more of the reporting company (ownership is defined broadly)

What is “substantial control”?

FinCEN expects that at least one individual exercises substantial control over each reporting company

An individual exercises substantial control over a reporting company if the person is any of the following:

- a senior officer (e.g., CEO, President, COO, CFO, GC)
- has authority to appoint or remove senior officers or a majority of directors
- is an “important decision-maker”*
- has any other form of substantial control

* Broadly defined as any individual who directs, determines, or has substantial influence over a company’s important business decisions

What goes into a BOI Report?

A BOI report must provide the following about the reporting company:

- legal name
- any trade names or DBAs
- US address
- jurisdiction of formation
- taxpayer identification number

A BOI report must provide the following about its beneficial owners*:

- full legal name
- date of birth
- current residence address
- passport or driver's license number, with an image of the document

In lieu of providing these details, a "FinCEN ID" can be obtained and used – highly recommended

- The reason a person is a beneficial owner does not need to be disclosed
- A parent reports on behalf of a minor
- There is no maximum number of beneficial owners who must be reported

* For companies formed after Jan 1, 2024, "company applicant" information must also be provided (normally the lawyer/paralegal that formed the company)



How to report?



- BOI reports are submitted electronically or uploaded through FinCEN's secure online tool (<https://www.fincen.gov/boi>)
- Free! - No fee to file
- Anyone can file on behalf of the company
- Be aware of scams!

What happens after filing a BOI Report?

- It's not an annual report - updated BOI reports must be filed as needed
- If a company was exempt but is no longer, it must file a BOI report within 30 days
- If a company files and later qualifies for an exemption, it should file an updated BOI report to indicate that it is now exempt
- Changes to "company applicant" information does not need to be reported

In light of the ongoing reporting obligations, it's important that reporting companies develop and implement policies & procedures

Who has access to BOI?



- BOI reports are not public
- BOI is stored in a secure nonpublic database
- US agencies have access to BOI for national security, intelligence, or law enforcement purposes
- State, local, or tribal law enforcement agencies, and some non-US governments, only have access to BOI pursuant to court order

What are the penalties for non-compliance?



- Penalties for non-compliance are high - A willful failure may result in civil penalties of up to \$591/day and criminal penalties of up to two years in jail and a \$10,000 fine (applies to each person)

Officers may be held accountable for a company's failure to file BOI reports

Civil/criminal penalties apply for willfully causing a company not to file a required BOI report or for reporting incomplete or false BOI

Resources

Some resources:

- FinCEN Online Filing Tool:
<https://www.fincen.gov/boi>
- FinCEN Small Entity Compliance Guide:
<https://www.fincen.gov/boi/small-entity-compliance-guide>
- FAQs:
<https://www.fincen.gov/boi-faqs>
- Create a FinCEN ID:
<https://fincenid.fincen.gov/landing>



Thank You

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