

Small Business Notes

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Q&A On Complying With Beneficial Ownership Disclosure Requirement of the Federal Corporate Transparency Act

Q. What is the disclosure requirement about?

A. The Federal Corporate Transparency Act is an anti-money laundering and anti-terrorism funding effort by the U.S. Department of the Treasury's Financial Crimes Enforcement Network (FinCEN) that requires "reporting companies" (to include corporations and limited liability companies) to provide certain identifying information on their "beneficial owners" (the natural persons who own and control them) and information on "company applicants" who form and register reporting companies. FinCEN will make that information available to federal, state, and local law enforcement agencies and regulatory agencies and to financial institutions that are required by the Corporate Transparency Act to obtain that information.

Q. What is a "reporting company"?

A. A "domestic reporting company" is a legal entity – to include corporations, trusts, and limited liability companies – formed by filing a document with the Secretary of State's office in a given state or by filing a comparable document with a comparable office of an Indian Tribal Government.

A "foreign reporting company" is an entity formed under the laws of a non-U.S. jurisdiction and which is required to be registered with a Secretary of State to transact business in that state.

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Q. Are small business entities exempt from the definition of “reporting company” and the reporting requirements of the law?

A. NO. There is no exemption based on size. There are exemptions for twenty three legal entities whose ownership information is available through licensing or registration by regulatory authorities:

- Securities reporting issuer
- Governmental authority
- Banks
- Credit unions
- Depository institution holding companies
- Money service businesses and money transmitters
- Broker or dealer in securities
- Security exchanges or clearing agencies
- Other Exchange Act registered entities
- Investment companies or investment advisors
- Venture capital fund advisors
- Insurance company
- State-licensed insurance producers
- Commodity Exchange Act registered entities
- Accounting firms
- Public utilities
- Financial market utilities
- Pooled investment vehicles
- Tax exempt entities
- Entities providing services to tax exempt organizations
- Large operating companies defined as having more than 20 full time employees in the U.S., having an operating presence in the U.S., and having \$5 million or more in reportable sales or operating revenue
- Subsidiaries of some exempted entities not to include money services businesses or certain pooled investment vehicles
- Inactive entities

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Q. Who is a “beneficial owner”?

A. A beneficial owner is an individual who, directly or indirectly, either exercises substantial control over a reporting company or owns or controls at least 25 percent of the ownership interests in the company.

“Substantial control” is exercised by senior officers of the company such as the president, CFO, general counsel, CEO, or COO and by others who may have authority over the appointment or removal of any senior officer or over a majority of the board of directors, or who direct, determine or have substantial influence over important decisions made by the reporting company.

Ownership of a 25% or more interest in the company can include: equity stock, any capital or profit interest, any instrument convertible to equity stock or profit interest, any option for purchase or sale of stock, any other instrument or contract that established ownership.

Q. Who is a “company applicant”?

A. A “company applicant” is an individual who directs or controls the creation of the company. For a domestic reporting company this is the individual who directly files the document with the Secretary of State.

Note that the final beneficial ownership rules limit reporting to the company applicants of reporting companies formed after January 1, 2024. For those companies the following information is required on a company applicant:

- Full legal name
- Date of Birth
- Complete current address
- A unique identifying number issued by an approved source such as a state drivers license, a passport, or other governmental identification.

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Q. What information must be provided for the “reporting company” itself?

A. The following information is required for each reporting company:

- The full name of the reporting company
- Any trade name or “DBA” name
- The business address of the reporting company
- The State or Tribal jurisdiction of formation
- A unique identifier associated with the reporting company such as an IRS TIN or EIN.

Q. What is the deadline for filing an initial report?

A. Businesses created before January 1, 2024 have until January 1, 2025 to file their initial report with FinCEN.

A Business formed or created after January 1, 2024 will have 90 calendar days from the date of creation or registration to file their initial report. After January 1, 2025 this deadline is shortened to 30 days.

Afterwards, a reporting company has 30 days to file an update report for any change to previously reported information. If the change involves correction of inaccurate information earlier reported, the reporting company has 30 days from the date it knew, or should have known that the earlier information was inaccurate.

Q. How is the reporting accomplished?

A. Beneficial ownership information is filed electronically through FinCEN’s secure website: <https://boiefiling.fincen.gov>.

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