

**ATTENTION ALL ENTITIES & BUSINESS OWNERS:**  
**The Corporate Transparency Act:**  
**Widespread Application of Regulatory Requirements**

As of January 1, 2024, a majority of businesses are required to disclose their Beneficial Ownership Information (“BOI”) to the U.S. Treasury Department’s Financial Crimes Enforcement Network (“FinCEN”) to comply with the Corporate Transparency Act (“CTA”). The CTA, enacted as part of the Anti-Money Laundering Act, requires all Reporting Companies to file reports detailing their BOI for its beneficial owners and company applicants with FinCEN.

**What is Beneficial Ownership Information (“BOI”)?**

BOI is information regarding a Reporting Company, its beneficial owners, and company applicants. As of January 1, 2024, Reporting Companies are be required to submit BOI reports to FinCEN.

**Who is A Reporting Company?**

A “Reporting Company” is any domestic or foreign corporation, limited liability company, limited liability partnership, or any similar entity created or formed by filing a document with a secretary of state or similar office.

The CTA expressly exempts 23 types of entities from reporting their BOI to FinCEN; these entities include, among others:

- General Partnerships;
- Sole Proprietorships;
- Large operating companies, which have: (1) an operating presence at a physical office within the United States; (2) more than 20 employees on a full-time basis; and (3) more than \$5,000,000 in gross receipts or sales in the United States;
- Public Companies;
- Nonprofit entities, political organizations, and certain tax-exempt trusts; and
- Investment companies or investment advisers

- To qualify as an investment company or investment adviser, the entity must:
  - Qualify as an investment company as defined in 15 U.S.C. § 80a-3, or as an investment adviser as defined in 15 U.S.C. § 80b-2; and
  - Be registered with the Securities and Exchange Commission under 15 U.S.C. § 80a-1*et seq.* or 15 U.S.C. § 80b-1 *et seq.*

A full list of exempt entities under the CTA can be found in 31 C.F.R. § 1010.380(c)(2). Merely identifying as an entity on the list does not necessarily mean an exemption applies. FinCEN strongly recommends that companies seek legal counsel to assess with the elements of the exemption qualifications apply.

### Who Is a “Beneficial Owner”?

As an initial matter, a Reporting Company can have multiple beneficial owners. Under CTA, a Reporting Company must disclose **all** beneficial owners. As such, there is no limit on the number of beneficial owners that must be disclosed to FinCEN.

A “Beneficial Owner” is defined as any individual who, directly or indirectly, exercises substantial control over the Reporting Company or owns or controls at least 25% of the ownership interests of such Reporting Company. There are more sophisticated formula requirements for calculating Beneficial Ownership when equity structures are more complex.

The following individuals are deemed to have “substantial control” over a Reporting Company:

- Senior Officers (i.e., a president, chief financial officer, general counsel, chief executive officer, chief operating officer);
- Those individuals who have the authority to appoint or remove any senior officer or a majority of the board of directors, or equivalent body.
- Important Decision-Makers (i.e., individuals who have substantial influence over important decisions).
- All individuals who have any form of substantial control over the Reporting Company.

The following are **not** beneficial owners under the CTA:

- A minor;

- An individual acting as a nominee, intermediary, custodian, or agent on behalf of another individual;
- An employee of a Reporting Company (excluding senior officers);
- An individual whose only interest in a Reporting Company is a future interest through a right of inheritance; and
- Creditors of a Reporting Company.

### **Who Is A “Company Applicant”?**

Depending on the date the Reporting Company was created and registered, a company applicant may not have to be disclosed to FinCEN. All Reporting Companies formed prior to January 1, 2024, will not have to disclose their company applicants’ BOI to FinCEN.

A “Company Applicant” is an individual who either (i) files the document that creates/registers the Reporting Company to do business in the United States, or (ii) is primarily responsible for directing or controlling such filing.

Unlike beneficial owners, Reporting Companies only need to disclose two (2) company applicants. Note, however, that neither a company nor a legal entity can serve as a company applicant.

### **What Information Must Be Disclosed As Part Of BOI Under The CTA?**

As a preliminary matter, all information disclosed to FinCEN will be kept confidential and only disclosed to federal and state law enforcement agencies in specified circumstances. Financial institutions will also have access to BOI in certain circumstances, with the consent of the Reporting Company.

Under the CTA, the following information must be disclosed as part of BOI:

For Reporting Companies:

- Full legal name;
- Any trade names or “doing business as” (d/b/a) names;
- Current U.S address (the address of the company’s principal place of business
- Jurisdiction of formation/registration; and

- Internal Revenue Service Taxpayer Identification Number (TIN) (including an Employer Identification Number (EIN))

For Beneficial Owners and Company Applicants:

- Their full legal name;
- Date of birth;
- Current address:
  - The individual's residential street address, except for company applicants who form or register a company in the course of their business, such as paralegals. For such individuals, report the business street address.
- Unique identifying number from a (non-expired) driver's license, passport, or other state or federal issued identification, and a copy of said document.

As an alternative to disclosing the above BOI for a Beneficial Owner, the individual may submit their BOI to FinCEN directly via an online filing system and obtain a "FinCEN Identifier." A FinCEN Identifier is a unique identifying number that FinCEN will issue to a Beneficial Owner to assist in filing the required disclosures. A FinCEN Identifier will best serve individuals who are beneficial owners of multiple Reporting Companies, as it will assist with administrative efficiency.

### **When Is The Deadline For Reporting Companies To Disclose Their BOI?**

Reporting Companies created or registered to do business **before** January 1, 2024, must file their initial BOI reports by January 1, 2025.

Reporting Companies created or registered to do business in the United States **on or after** January 1, 2024 but **before** January 1, 2025, must disclose their BOI **within 90 days** after notice of confirmed formation.

Reporting Companies created or registered to do business **on or after** January 1, 2025, must disclose within 30 days of notice of confirmed formation.

### **Is the Personal Information Public?**

As it stands, information submitted through FinCEN to meet the CTA requirements will be available only to the U.S. Department of Treasury and will not be available to the public. The

information supplied will be sensitive personally identifiable information, so it is important to keep in mind more secure means of gathering and transmitting data. Third parties are in the midst of either offering or developing platforms to assist professional services firms with these governmental submissions.

### **What Happens If There Is A Change To A Reporting Company's BOI?**

If there is **any change** to a Reporting Company's *beneficial owners*, the Reporting Company must file an updated BOI report no later than 30 days after the date on which the change occurred, provided that FinCEN is providing temporary leniency, at least during 2024, to correct mistakes and omissions within 90 days of the filing *deadline*.

A Reporting Company, however, is not required to file an updated report for any changes to a Reporting Company's company applicant.

### **What Are The Penalties For Failing To Disclose BOI To FinCEN?**

Any person who (a) willfully fails to report, complete, or update BOI to FinCEN, or (b) willfully, or attempts to, provide false or fraudulent BOI, will be subject to both civil and criminal penalties.

- Civil Penalties: \$500 per day that the violation continues, up to \$10,000.
- Criminal Penalties: Imprisonment up to two (2) years and/or a fine of up to \$10,000.

### **What happens if a reporting company does not report beneficial ownership information to FinCEN or fails to update or correct the information within the required timeframe?**

FinCEN published the following in their public FAQ:

"FinCEN is working hard to ensure that reporting companies are aware of their obligations to report, update, and correct beneficial ownership information. FinCEN understands this is a new requirement. If you correct a mistake or omission within 90 days of the deadline for the original report, you may avoid being penalized. However, you could face civil and criminal penalties if you disregard your beneficial ownership information reporting obligations."

### **Who Can Help With Reporting?**

In many states, including New Jersey, assisting persons, including entities, with determinations on reporting requirements and providing oversight, guidance, or management over the process constitutes the practice of law. CPAs and Enrolled Agents may provide limited support, for example, to single member LLCs and assist with some level of administrative support. The New Jersey Supreme Court Committee on the Unauthorized Practice of Law recently published such position. Accordingly, entities and individuals should seek legal counsel to assist with the BOI reporting obligations.

### **What Is OlenderFeldman's BOI Platform?**

The OF BOI Platform is a customized platform that assists with assessing reporting requirements through a carefully designed questionnaire in order to streamline and automate the assessment phase. This allows clients to save time and money by synchronizing the circumstances of each prospective reporting entity with the qualification elements and exemptions. The platform also provides a secure way to upload data necessary for the FinCEN reporting portal while also guiding clients in a user-friendly manner on the data needed. The platform acts as a gateway between OlenderFeldman and its clients to create efficiency with advisory services and accessible visibility over each entity submission. The firm recommends starting the process with the OF BOI Platform in order to mitigate the need for advisory services and to save money compared to seeking advisory services before using the OF BOI Platform. Of course, clients may choose to seek advisory services first and then use the platform.

Further information and guidance regarding the CTA BOI requirements and the process for submitting BOI to FinCEN can be obtained from [Craig D. Bronsnick \(cbronsnick@olenderfeldman.com\)](mailto:cbronsnick@olenderfeldman.com) or [Taylor Higgins \(thiggins@olenderfeldman.com\)](mailto:thiggins@olenderfeldman.com).

*The foregoing is intended to be informational and does not constitute legal advice regarding any specific situation.*