

WHAT WE KNOW ABOUT THE CORPORATE TRANSPARENCY ACT

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Presentation prepared by:



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WELCOME AND THANK YOU FOR JOINING THE NUCO FILINGS CTA WEBINAR

- **The presentation will begin shortly.**
- **You are in mute**
- **Please keep your camera off**
- **Feel free to enter any questions or comments in the chatbox. We will have time for Q&A at the end of the presentation.**



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ABOUT THE PRESENTERS

Agenda

1. What is the CTA
2. Who must file
3. What must be filed
4. Exemptions
5. Deadlines and Penalties
6. The NY State LLC Transparency Act
7. Q&A





WHAT IS THE CTA

The National Defense Authorization Act FY 2021 (NDAA), enacted by Congress on January 1, 2021, includes the Corporate Transparency Act (CTA)

- The primary stated purpose is to target shell companies, prevent money laundering and other illicit activities
- This is the first uniform Federal Beneficial Ownership disclosure requirement in the United States
- The CTA will be regulated by FinCEN (Financial Crimes Enforcement Network), a division of the Treasury Department
- CTA takes effect January 1, 2024
- Steep penalties will be assessed for violating the CTA





WHAT DOES IT SAY

The CTA requires all “reporting companies” to file a “**Beneficial Owners**” and “Company Applicant” information report with FinCEN within 30 calendar days of when its formation has become effective, or if already previously formed, within one year of January 1, 2024 (i.e. January 1, 2025).

Who must file?

Which businesses types must file the report?

A “reporting company” is defined as **any** domestic or foreign corporation, LLC or any entity that is created by filing with the Secretary of State or similar office.

- **LLC**
- **Corporation**
- **LP**
- *etc.*

Not general partnerships, sole proprietorships, or trusts that need not file to exist.

- FinCEN estimates that around **32.5 million entities** will need to file a BOI Report in Year 1 and an additional **5 million** each year.

Who is responsible to file the report?

It is the responsibility of the “beneficial owner” (and/or “company applicants”) of these entities to ensure the report is filed.

Some Law Firms or Filing Companies, such as NUC Filings, may be able to assist customers with this filing.

What must be filed?

1. Company information:

- a) Company name including all DBA's
- b) Address
- c) State of formation
- d) EIN

2. "Beneficial owner's" information (BOI):

- a) Name
 - b) DOB
 - c) Residential or business address
 - d) Unique ID # (passport of driver's license) – with scanned copy
- Or a "FINCEN ID"
- "A beneficial owner is an individual who, directly or indirectly, **exercises substantial control over the entity or owns or controls not less than 25 percent of the ownership interests of the entity.**"
 - This includes Senior Officers: everyone who has the title CEO, CFO, COO, and General Counsel, or anyone who performs similar functions.
 - Exceptions: individual employee, minors etc.

3. Filer's ("company applicants") information:

- a) Name
 - b) DOB
 - c) Residential or business address
 - d) Unique ID # (passport of driver's license) – with scanned copy
- Or a "FINCEN ID"
- Company applicant is defined as the following 2 persons:
 - a. The individual who directly files the document that creates the entity = the filing company.
 - b. The individual who is primarily responsible for directing or controlling the filing of the relevant document by another = the attorney.
 - The "company applicants" information is only required for companies created after January 1, 2024

What must be filed? (cont.)

Other considerations regarding your reported information:

- **“FINCEN ID”** - There will be an option to apply for a FINCEN ID number rather than providing your personal information to the filer. (However, those who avail themselves of this option will then be required to update their information with FinCEN potentially forever, until death).
- The information is to remain in the FinCEN database for the life of the reporting company plus a period of 5 years after dissolution.
- There is currently no way for Company Applicants to remove themselves from the database, even if they retire.
- It is unclear as to whether the reporting obligation will be imposed on the “company applicant” or the entity itself.

Exemptions

There are **23 Exemptions** – mostly types of entities otherwise regulated by federal or state departments

- | | |
|---|---|
| 1. Securities reporting issuers | 12. Insurance companies |
| 2. U.S. governmental authority | 13. State licensed insurance producers |
| 3. Banks | 14. Commodity Exchange Act registered entities |
| 4. Depository institution holding companies | 15. Public Accounting firms |
| 5. Credit unions | 16. Publicly traded entities |
| 6. Money services businesses | 17. Financial market utilities |
| 7. Securities exchanges or clearing agencies | 18. Pooled investment vehicles |
| 8. Securities broker-dealers | 19. Tax-exempt entities (501c3's), |
| 9. Other Exchange Act registered entities | 20. Entities assisting a tax-exempt entity |
| 10. Investment companies or investment advisors (registered with the SEC) | 21. Large operating companies (see next column) |
| 11. Venture capital fund advisors (registered with the SEC) | 22. Subsidiaries of certain exempt entities |
| | 23. Inactive entities (see next column) |

'Large Operating Company' exemption qualifications:

- (A) have 20 or more full time employees in the U.S., and
- (B) filed an income tax return in the previous year with at least \$5 million in gross receipts or sales.

Inactive entities exemption qualifications:

- (A) Has existed on or before January 1, 2020;
- (B) Has not engaged in active business;
- (C) Is not owned by a foreign person, whether directly or indirectly, wholly or partially;
- (D) Has not experienced any change in ownership in the preceding twelve-month period;
- (E) Has not sent or received funds greater than \$1,000 in the preceding twelve-month period; and
- (F) Does not hold any kind or type of assets

- No exemption filings required

Deadlines and Penalties

When must you file?

- Existing entities before 1/1/24 have 1 year to file (by 1/1/2025)
- New entities filed after 1/1/2024 = 30 days from formation
- This is a one-time filing (not annual) but needs to be updated within 30 days of change if anything changes

Penalties:

- \$500 per day civil penalty
- \$10,000 fine or 2 years imprisonment
- 90-day Safe Harbor

A person is considered to be liable if the person caused the failure to report the complete or updated BOI or is a Senior Officer at the time of the failure.

How to file?

It will only be available to file online and would be a free filing.
<https://www.fincen.gov/boi>
(not yet available)

It is estimated to take up to 45 minutes to file.

Who will have access to the information contained in the BOI report?

Beneficial owner information (BOI) is confidential and not available to the public. Government employees, officers and financial employees will not be able to access the information.

FinCEN is authorized to disclose BOI to a limited group of requestors including:

- (1) federal agencies engaged in national security, intelligence and law enforcement,
- (2) state law enforcement agencies with a court order,
- (3) the Treasury Department,
- (4) financial institutions with the company's consent,
- (5) government regulators of financial institutions, and
- (6) certain foreign authorities requesting information through a U.S. agency.

Information is required to be held onto for five years after termination or dissolution.

The NY State LLC Transparency Act

On June 20, 2023 NY State legislature has passed its own version of the LLC Transparency Act. The bill is set to take effect one year after the governor signs it.

- The beneficial ownership reporting requirements are modeled after the federal CTA requirements and will be filed with the New York secretary of states office.
- A key differential is that unlike the federal CTA, the NY bill would establish a public database containing the names and addresses of beneficial owners of LLCs.
- In addition, in its current form, the LLC Transparency Act applies only to LLCs (not corporations etc).
- There will be a \$250 civil penalty for not filing within two years.

Other States are considering their own Transparency Acts and/or making changes to the information required upon forming an entity.

HOW CAN RIVERSIDE FILINGS HELP?

As a corporate service provider, NUCO Filings is preparing to take on the role of “company applicant” when we are handling formation filings after January 1, 2024, obtaining the necessary FinCEN ID numbers to do so.

Additionally, we are developing technology and service solutions to help our clients determine whether their company meets the exemption criteria or will be required to file a BOI report and assist them with the filing process for these reports.



Summary

Starting 1/1/24, all entities would need to file an information report with FINCEN containing the identification of the Beneficial Owners and the Company Applicants.

There will be steep penalties for not filing on time.

Some questions remain unanswered and we hope to be updated before 1/1/24.

Unanswered Questions:

- Who is responsible to file the BOI?
- How does this affect law firms or filing companies?
- How long does the information remain there and is there any way to “resign”?
- How does this apply to holding companies owned by other companies?
- Will a Disregarded entity now need EIN?
- The National Small Business Association (NSBA) lawsuit challenging constitutionality of the CTA

THANK YOU!



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