



## FinCEN's Corporate Transparency Act

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### What is the Corporate Transparency Act?

Enacted by Congress in January of 2021, the purpose of the CTA is to protect US Financial Institutions from being used to launder money by illicit actors creating shell companies. This law states that all reporting companies must provide ownership and applicant information when doing business in the U.S. The ownership and applicant information are to be kept by FinCEN in a secure government database.

### Who will have access to this database?

US law enforcement agencies will be allowed to access this database to investigate entities they suspect of illicit activities. Financial institutions & regulators, such as banks, may also have access to this database upon the company's consent for customer due diligence requirements. (ex. Opening a bank account or obtaining a business loan)

### What is a 'Reporting Company'?

There are TWO types of reporting companies, domestic and foreign. A domestic reporting company is any corporation, LLC, or other entity created by filing a document with any Secretary of State or similar office. A foreign reporting company is a corporation, LLC or other entity created in a foreign country that is registered to do business in the US by filing a document with the Secretary of State or similar office.

(Final rule did not define the term 'other entity', will likely include limited liability partnerships, limited liability, limited partnerships, business trusts, and most limited partnerships.)

### Exceptions to being a 'Reporting Company'

There are 23 total exceptions to being considered a 'Reporting Company.' For brevity's sake here is an overview of the exempt entities

- Tax Exempt entities
- Entities already heavily regulated through the SEC & other regulatory bodies for larger entities
- 'Large Operating Companies' Defined as: a company that employs more than 20 full-time employees in the United States and has an operating presence at a physical office in the United States. And that's filed a federal tax or information return for the previous year, showing it had more than \$5 million dollars in gross receipts or sales.

### What does a 'Reporting Company' need to report?

Each reporting company to provide:

- The full name of the reporting company

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- Any trade name or “doing business as” name of the reporting company
- The business street address of the reporting company
- The state or Tribal jurisdiction of formation of the reporting company (or for a foreign reporting company, the state or Tribal jurisdiction where such company first registers)
- An IRS TIN of the reporting company (or, where a reporting company has not yet been issued a TIN, either a Dun & Bradstreet Data Universal Numbering System (DUNS) Number or a Legal Entity Identifier (LEI)).

#### Who is a ‘Beneficial Owner’ and what information do they need to report?

A [beneficial owner](#) is described as any individual who meets at least one of two criteria: (1) the individual exercises substantial control over the reporting company; or (2) the individual owns or controls at least 25 percent of the ownership interests of a reporting company.

#### Each identified Beneficial Owner will need to report the following:

- Full legal name
- Date of birth
- Current residential address (per proposed rule)
- Unique identifying number from an acceptable identification document
  - Valid drivers license number or unexpired passport number
  - In the case of foreign beneficial owners, a foreign passport is acceptable per [31 U.S.C. 5336\(a\)\(1\)](#)
- A scanned copy of the above referenced identification document

#### Who is considered an ‘Applicant’?

As a registered agent we would be considered the ‘Applicant’ in these filing scenarios. There are still changes and suggestions being made before the implementation in 2024, but as of now the ‘Applicant’ information is below.

A ‘Company Applicant’ would be the *individual* who files the document that creates the entity. In the case of a foreign reporting company, a ‘Company Applicant’ would be the *individual* who files the document that first registers the entity to do business in the United States. The proposed regulations specified that anyone who directs or controls the filing of an entity creation or registration document by another would also be a ‘Company Applicant’.

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What information do ‘Applicants’ need to report?

Applicants need to report the exact same information as Beneficial Owners, except they can use their business address instead of their residential address.

[How long do I have before I must file my report with FinCEN?](#)

Companies filed after the implementation date of January 1<sup>st</sup>, 2024, will have 30 days from the day they receive notice of their registration to file their FinCEN report.

Companies that are deemed reporting companies that were filed before the 2024 implementation date will have 1 year to file their FinCEN report.

If there are any inaccuracies in the report, or the reporting company needs to update the report due to any changes, they will also have 30 days to amend the report.

*[\\*The attached link lists that reporting companies have 14 days to update any changes and file their initial report, however, this has been updated to 30 days per the DE Strategic Planning Conference and the Final Rule](#)*

Do I have to give my personal information to each client we deal with?

The short answer is no. FinCEN is creating a way to obtain a ‘[FinCEN number](#)’, applicants can submit their required information to FinCEN in advance and obtain this number to give to beneficial owners who need to file a report in lieu of giving out all of their personal information.