

## To BOI or Not BOI

The Financial Crimes Enforcement Network, aka FinCen, was given the responsibility to enforce the Corporate Transparency Act (“CTA”) passed by Congress in 2021. There has been significant pressure on the United States (“U.S.”) by those in the European Union and other countries to not be a country that is seen as supporting illegal uses of money. While new information is now being required to be reported by several types of businesses, this is not a new issue. The origin of trying to prevent illegal users of money goes back to 1970 when the Bank Secrecy Act was passed. Since then, and due to the corrupt practices of those that try to support illegal practices and terrorism in the world, there have been several legislative actions passed. The CTA is just the latest in this long history.

What does the CTA require? The CTA requires most companies in the U.S. to file reports related to Beneficial Ownership Information (**BOI**). There are two types of entities that are required to file; domestic reporting companies and foreign reporting companies. Domestic reporting companies include corporations, limited liability company, and any other entity created by the filing of a document with a secretary of state or any similar office in the U.S. A foreign reporting company is a corporation or limited liability company that was formed under the laws of a foreign country, but has registered to do business in the U.S. There are some exceptions, including an entity defined as a “large operating company” that has over 20 full-time employees in the U.S., has a physical office in the U.S., and filed a federal income tax return with more than \$5,000,000 in gross receipts or sales, not including foreign sales. In addition, publicly traded companies that meet certain requirements, and other types of industries, like insurance or banking companies that are already regulated, most likely are exempt. In total there are 23 types of entities that are exempt from the filing requirement.

Who is a beneficial owner? This is an individual who either directly or indirectly exercises control over the entity, or owns or controls at least 25% of the entity’s ownership interests. “Control” is defined specifically in the act and is based on the ability to make decisions, has authority to remove or appoint senior officers, and other unique ways.

When is the reporting due? Currently, any new entity as of January 1, 2024 is required to file the BOI form within 90 days of receiving the secretary of state confirmation of registration. If the entity existed prior to January 1, 2024, then the filing is due before January 1, 2025. Effective January 1, 2025, any new entity has 30 days to file.

How is the reporting completed? The filing can be done online at [fincen.gov](https://fincen.gov), or through a third-party service. There is no need to register and there is no fee. Once the process starts, the entity will be given a registration identification number. There is a late filing fee of \$500 per day up to a maximum of \$10,000 and may include the possibility of jail time of up to two years. There is no penalty for filing inaccurate information, unless it is deemed willful. Lastly, any changes to the reporting information should be updated within 30 days.

There are still a few questions concerning if this will be an annual filing or just when there are changes, as the guidance is not clear. In addition, the real question is will the filing requirement continue to exist? Recently, a U.S. District Court ruled that the reporting mandate constituted Congressional overreach and is unconstitutional and can not be enforced. Unfortunately for now, this only applies to the plaintiff in the suit, National Small Business United, that is a trade organization, and it’s registered members. However, it may be a theme of more suits to come.

Lastly, as always be vigilant when receiving emails regarding this topic. FinCen has announced that there have been several fraudulent attempts to gather information under this filing requirement. FinCen will never send a link or ask for a QR code to be scanned through an email. A best practice is to just always go directly to the website for any filing or for any updated information.

In the meantime, the [fincen.gov/boi](https://www.fincen.gov/boi) website has FAQ's and a Small Business Compliance Guide to assist filers. At Hedman Partners LLP, we can also assist in the referral to a third party provider should you need assistance and don't want to file on your own. For any questions, feel free to reach out to Janet Thomerson, Audit Partner at (661) 286-1543 or [janet.thomerson@hpllp.com](mailto:janet.thomerson@hpllp.com).