

# CORPORATE TRANSPARENCY ACT – BENEFICIAL OWNERSHIP REPORTING REQUIREMENTS

THE CORPORATE TRANSPARENCY ACT'S (CTA) BENEFICIAL OWNERSHIP REPORTING REQUIREMENTS WILL BE EFFECTIVE IN THE U.S. FROM JANUARY 1, 2024. THE CTA IS A BROAD REPORTING RULE THAT AIMS TO CAPTURE INFORMATION ON OWNERSHIP AND CONTROL OF U.S. COMPANIES AND FOREIGN COMPANIES REGISTERED TO DO BUSINESS IN THE U.S. FAILURE TO COMPLY WITH THE REQUIREMENTS RISKS INCURRING SIGNIFICANT PENALTIES.

## WHO REPORTS?

In short, the managers/directors of corporations, LLCs, LPs, LLPs, and other entities that are created or registered to do business in any U.S. state, District of Columbia, or other U.S. territory or possession are responsible for filing the Beneficial Ownership Information (BOI) reporting with the U.S. Treasury's Financial Crimes Enforcement Network (FinCEN). Importantly, this filing responsibility can be outsourced.

## Exemptions

There are 23 exemptions from the BOI filing requirements, including: public companies, banks, credit unions, money services businesses, broker-dealers, securities reporting issuers, Securities Exchange Act registered entities, investment companies or investment advisers, venture capital fund advisers, insurance companies, Commodity Exchange Act registered entities, pooled investment vehicles, tax exempt entities, large operating companies, certain wholly owned subsidiaries and inactive entities.

## WHAT INFORMATION IS REPORTED?

### Reporting Company

- > Legal name (including doing business as (DBA) names)
- > Address
  - > cannot be a PO Box or third-party address
- > Jurisdiction
  - > if a foreign company, the original jurisdiction in which the company was formed and the first jurisdiction in which it registered in the U.S.
  - > if a domestic company, the U.S. jurisdiction in which the company was formed
- > Tax Identification Number
- > Date company was created or registered in the U.S.

### Owner/Controlling Person/Applicant

- > Individual's legal name
- > Birthdate
- > Residential street address
  - > if company applicant was acting in the role of their employment, then business street address
- > Identifying number from an approved ID, the state that issued it, and the image of the document used; must provide one of the following:
  - > non-expired driver's license issued by a U.S. state or territory

- > non-expired ID document issued by a U.S. state or territory
- > non-expired passport issued by the U.S. government
- > non-expired passport issued by a foreign government

## BENEFICIAL OWNER / COMPANY APPLICANT – DEFINITIONS

The rule defines a beneficial owner as having 1) 25% or more ownership in the company and/or 2) substantial control over the company.

### Ownership

Ownership is defined as an individual who, directly or indirectly, owns or controls 25% or more ownership interest of the reporting company. Examples of ownership include share capital, units, or membership interest. This rule applies to individuals both in and outside the U.S.

Ownership interest may be held directly by an individual but may also be held by another company or trust. The following people may be reported based on their ownership of the company.

- > Individuals
- > Trustees or other individuals with authority to dispose of trust assets
- > Beneficiaries who are sole permissible recipients of income and principal, or have the right to demand distribution or withdrawal of a substantial amount of trust assets
- > Grantors with the right to revoke or withdraw assets
- > Trusts
- > Investment advisors, distribution advisors, trust protectors or other committee members that hold veto powers over certain actions of the trustee

### Control

An individual is deemed to have control if they, directly or indirectly, exercise substantial control over the reporting company. The following people may be reported based on their control of the company.

- > Senior officers (e.g., president, CEO, COO, CFO, manager, director) or anyone that performs the duty without the title
- > Individuals with authority to remove any senior officer
- > Individuals who direct, determine, or exercise substantial influence over important decisions
  - > this could include investment advisors, trust protectors, distribution advisors or parties directing a corporate manager if a management services agreement is in place

### Company Applicant

- > The individual who directly filed the document that creates or registers the reporting company, and the individual who is responsible for directing or controlling the formation of the company

## EXCEPTIONS

If the beneficial owner is a minor child, the parent or guardian will be reported until they reach the age of majority. At that time, the CTA must be filed again to update the information.

The beneficial owner may give a FinCEN ID instead of listing the above. To obtain a FinCEN ID you must provide the above information to FinCEN. Once you have your FinCEN ID you can use this for all BOI filings you need. This is useful if you have multiple entities.

#### WHERE IS THIS INFORMATION REPORTED?

The information will be reported to a **non-public** database maintained by FinCEN. FinCEN has assured that this database will meet the highest Federal Information Security Management Act level by requiring extensive protocols and safeguards for authorized users.

While the database is non-public, that does not mean that no one will have access. The following people will have access to the database:

- > Federal agencies engaged in law enforcement, national security or intelligence activity to be used in furtherance of such activity
- > State, local or Tribal law enforcement for use in criminal or civil investigations and with authorization from a court of competent jurisdiction
- > Certain foreign agencies engaged in law enforcement, national security or intelligence activity
- > Financial institutions subject to customer due diligence (CDD) requirements, to facilitate compliance with CDD, and their regulators
- > Certain treasury officers and employees, including for tax administration

#### WHAT ARE THE REPORTING DEADLINES?

Each reporting company must complete an initial report and then again anytime the information changes. There is not a requirement for an annual report, only when changes are made. The below schedule highlights the deadlines for reporting.

REPORTING COMPANY	DEADLINE
Existing reporting companies formed before 1/1/2024	1/1/2025
New reporting companies formed after 1/1/2024	90 days after formation
Updates and corrections to BOI	30 days after change

#### WHAT ARE THE PENALTIES IF A COMPANY FAILS TO REPORT?

A \$500 daily civil penalty and up to \$10,000 criminal fine and/or up to two (2) years imprisonment may be imposed on any individual, reporting company or other person that: 1) knowingly provides to FinCEN false or fraudulent BOI or fraudulent documents; or 2) wilfully fails to provide complete or updated BOI.

#### HOW CAN TRIDENT TRUST HELP?

Trident Trust has been providing corporate and fiduciary services for 45 years. We have helped clients comply with similar reporting regimes across our global footprint and are ready to provide the required support in the U.S. for the new BOI filing regime.

Trident Trust will begin by classifying the entity to ensure that it does not meet one of the twenty-three exemptions. We will then obtain the corporate documents and information on the beneficial owners. If the company does not qualify for one of the exemptions, we will complete the BOI filing on behalf of the company.

After the initial filing, your responsibility is to keep Trident informed of any changes in ownership or control, including changes in any of the information reported on the individual. (e.g., remember to let us know when you move to a new address). Once we have been made aware of a change, we will complete the amended filing so that the company maintains compliance.

In addition to BOI reporting, Trident Trust offers a full suite of U.S. corporate services (e.g., management/director services, annual report filing on behalf of the manager, annual minutes, annual financial accounts, etc.) through Trident Corporate Services (USA) LLC and are prepared to assist in any way we can.

Please see your Trident Trust representative for inquiries and/or a specific quote for your company or contact our US corporate services team at [tcsu@tridenttrust.com](mailto:tcsu@tridenttrust.com).

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- ▶ TECH ENABLED
- ▶ GLOBAL COVERAGE
- ▶ TAILORED SERVICE
- ▶ 1,000 STAFF
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- ▶ \$140BN AUA
- ▶ FUNDS
- ▶ PRIVATE CLIENTS
- ▶ CORPORATE CLIENTS
- ▶ MARITIME

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