

THE CORPORATE TRANSPARENCY ACT

Effective as of January 1, 2024, there is a new federally-mandated, anti-money laundering requirement in place that is applicable to the organization of nearly all new corporations, limited liability companies, statutory partnerships and any other business entities that must file their organizational documents with any State (“New Entity”). Known as the “Corporate Transparency Act” (“CTA”), it imposes on you the obligation to file a Beneficial Owner Information (“BOI”) report with the Financial Crimes Enforcement Network of the US Treasury (“FinCEN”).

The BOI Report must be filed with FinCEN within ninety (90) days of the date of the state filing for the New Entity. BOI Reports are strictly confidential, and there are significant limitations on the law enforcement departments that can access them.

PLEASE NOTE: The obligation to file a BOI Report rests solely with you, the client. Katz Baskies & Wolf is not filing BOI Reports. Note further that there are meaningful penalties associated with the failure to file a BOI Report on a timely basis.

Information regarding the filing obligations and a link to actually file a BOI Report can be found at this web address: <https://www.fincen.gov/boi> .This link will take you to a webpage giving you an option to file using a pdf or to file online. To assist in understanding a bit about the filing system, attached is a copy of the pdf that can be downloaded (please note that a printed copy of the pdf may not be used for submitting BOI Reports) .

You should be aware that filings with the various Departments of State are public records, and those who file often receive unsolicited communications, some of which are trying to market goods or services that you do not need. FinCEN has warned that there may be fraudulent attempts to seek information from you, including confidential data about the owners of the entity. FinCEN will never send unsolicited requests for information.

Company Reporting/Entities Required to Report and Certain Exceptions. Generally, the CTA requires reporting by all U.S. entities created via filing documents with a state’s secretary of state or similar office (as noted above, that means, corporations, limited liability companies, statutory partnerships and any other business entities such as state law business trusts). Exceptions to the reporting requirement, of which there are more than 20, include, but are not limited to, SEC reporting companies, banks and credit unions, securities brokers and dealers, large operating businesses (20 or more full time employees and greater than \$5M in revenues) and tax-exempt organizations (although not entities owned by tax-exempt organizations). Typical estate planning trusts are not required to report under the CTA because they are not created by filing documents with the secretary of state’s office, but many of the entities owned by such trusts will be obligated to report.

Information for Company Reporting/Filing. When you go online to file the BOI Report for the New Entity, you will need the following information for the reporting company: (i) the full legal name, (ii) any trade name or “doing business as” name for the reporting company, (iii) a complete address of the reporting company, including street address of the principal place of business (a

P.O. Box is not acceptable nor is the address of the attorney who formed the entity), (iv) the state of formation, and (v) the Taxpayer Identification Number for the reporting company.

In addition, the BOI report must include the following information for each beneficial owner and each company applicant: (i) full legal name, (ii) date of birth, (iii) complete current residential address, (iv) a unique identifying number from certain official governmental identification documents (e.g., non-expired passport or government issued driver's license), and (v) a copy of the documents used.

Alternatively, FinCEN will issue unique identifying numbers to individuals who request them. Those unique identifying numbers can then be used in place of a person's personal information when the reporting company files its ownership-information report. This option should be useful to clients who own or control many entities.

Beneficial Owner Reporting/Who are "Beneficial Owners"? This is really the key question to evaluate before attempting to file the BOI Report. For most reporting entities, it should be fairly straightforward – the owners of 25% or more of the entity.

For purposes of the CTA, beneficial owners are not just the persons many would consider to be owners of an entity. A beneficial owner includes any individual who, directly or indirectly, either (i) exercises "substantial control" over a reporting company or (ii) owns or controls at least 25 percent of the ownership interests of such reporting company.

There are a lot of key phrases in this definition, including "directly or indirectly," "substantial control," "owns or controls," and "ownership interests." Each of them is defined in the final FinCEN rule for Beneficial Ownership Information Reporting Requirements (the "FinCEN rule") and generally results in a very broad series of rules intended to catch as many people as possible who could potentially influence the operation of the entity.

"Substantial control" over a reporting company can include a wide range of things, including (i) serving as a senior officer of the reporting company; (ii) having authority over the appointment or removal of any senior officer or a majority of the board of directors (or similar body); and (iii) having substantial influence over important decisions made by the reporting company (which is further defined in the FinCEN rule).

In addition to direct control over the reporting company, an individual can exercise substantial control *indirectly* through a number of arrangements and relationships set forth in the FinCEN rule. It is important to note that a person acting as trustee of a trust may have direct or indirect control of an entity owned by the trust.

Thus, you can see that there are a number of ways in which a person might have direct or indirect control over substantial decisions and operations of a reporting company, and that person would then be required to report as a beneficial owner.

"Ownership interests" include not only equity and stock instruments (and other similar arrangements), regardless of whether they are transferable or confer voting rights, but also a broad array of other interests, rights, and other arrangements set forth in the FinCEN rule. The definition

is broad enough to include any type of equity interests, profits interests, convertible instruments and interests, warrants, options, puts, calls and other entity interests.

As with direct and indirect methods of having substantial control over a reporting company, an individual can have direct or indirect ownership of a reporting company. Direct ownership of an interest in 25% or more of a reporting company is fairly easily understood. However, beneficial owners also include those who “control” ownership interests in a wide manner of ways, including holding the interest as a joint owner, through an individual who acts as agent or nominee of the beneficial owner, through ownership or control of intermediary entities, or through a trust. If a minor is a beneficial owner, the minor’s parents’ information may be reported instead of the minor child’s information.

If a trust holds an ownership interest, the FinCEN rule provides that the beneficial owner is the trustee of the trust or other individual “with the authority to dispose of trust assets,” which may include a power of appointment. The trustee of a trust that holds a 25% ownership interest in a reporting company seems an obvious beneficial owner. But in addition to the trustee, the term also includes (a) a beneficiary who (i) is the sole permissible recipient of income and principal from the trust (a common arrangement for certain marital trusts) or (ii) has the right to withdraw or to demand a distribution of substantially all of the assets from the trust; and (b) a grantor who has the right to revoke the trust or otherwise withdraw the assets of the trust. These provisions could implicate a number of individuals who hold beneficial interests in the trust, and also include others associated with the trust, such as a trust protector, depending on the powers granted to these individuals under the trust agreement or applicable law. For example, a common planning technique for irrevocable trusts is to give the grantor (i.e., the person who created the trust) the power to substitute assets. Although not clear, this might mean that a grantor with such a power has the power to “withdraw” the assets of the trust and is therefore a beneficial owner. Other beneficiaries of trusts may have the power to withdraw assets via what are commonly known as “Crummey” powers or powers of appointment and, depending on the circumstances of the trust, they too may be deemed to be beneficial owners. Given the wide array of powers that may spread throughout a trust instrument to achieve specific estate and gift tax planning goals, a reporting company that has trusts in the ownership or control structure will need to plan ahead to first determine which individuals might be deemed to be beneficial owners of the entity as a result of their interests in or powers over the trust, and second to gather all the information which may need to be reported on those individuals.

Deadlines for Filing. Entities formed on or after January 1, 2024 must file within 90 days after receiving notice of their creation, filing or registration. Entities in existence *prior to* January 1, 2024, must report to FinCEN no later than January 1, 2025.

In addition, updated reports are required within 30 days of any change in the reportable information of any of the beneficial owners or the identities of the beneficial owners. For instance, if a reporting company is wholly owned by A and A moves, then the reporting company must file an updated report within 30 days of A’s move. If A marries (or divorces) resulting in a name change, then an updated report must be filed within 30 days of the name change. If A dies, then the beneficiaries of A’s estate who become successor owners of the entity will be required to register

within 30 days after receiving title to the entity (although there is a break during a probate administration, for example). These are not things that historically you would consider having to report, but you now must be cognizant of for all reporting companies and beneficial owners.

Any person violating the requirements of the CTA is liable for civil penalties of not more than \$500 for each day the violation continues, and criminal penalties of up to two years imprisonment for intentionally disregarding the CTA and fines of up to \$10,000.

Once again, we are prepared to assist you in understanding your obligations under the CTA; however, we are not engaging in any CTA compliance work at this time.



Beneficial Ownership Information Report

Version Number: 1.0

OMB No. 1506-0076

Release Date: 01-01-2024

Report Preparation & Submission Instructions:

Instructions

1. Complete the report in its entirety with all required information. Click **Instructions** for help.
2. Click **Validate** to ensure all entered data is properly formatted and that all required fields are completed.
3. Click **Finalize** to lock the entries in the report and prepare it for submission. Click **Edit Report** to unlock and re-edit.
4. Click **Save** to retain a local copy of the report (this can be done at any time during report preparation).
5. (Optional) Click **Print** to print a hard copy of your completed report.
6. Select **Ready to File** (activated after the report is finalized and saved locally) to begin the submission process.

Finalize

Filing Information

1. *Type of filing:

- a. Initial report
- b. Correct prior report
- c. Update prior report
- d. Newly exempt entity

Reporting Company information associated with most recent report, if any:

- e. Legal name
 - f. Tax Identification type
 - g. Tax Identification number
 - h. Country/Jurisdiction (if foreign tax ID only)
2. Date prepared (auto-filled when form is finalized)

PRIVACY ACT AND PAPERWORK REDUCTION ACT NOTICE

This notice is given under the Privacy Act of 1974 (Privacy Act) and the Paperwork Reduction Act of 1995 (Paperwork Reduction Act). The Privacy Act and Paperwork Reduction Act require that FinCEN inform persons of the following when requesting and collecting information in connection with this collection of information. This collection of information is authorized under 31 U.S.C. 5336 and 31 C.F.R. 1010.380. The principal purpose of this collection of information is to generate a database of information that is highly useful in facilitating national security, intelligence, and law enforcement activities, as well as compliance with anti-money laundering, countering the financing of terrorism, and customer due diligence requirements under applicable law. Pursuant to 31 U.S.C. 5336 and 31 C.F.R. 1010.380, reporting companies and certain other persons must provide specified information. The provision of that information is mandatory and failure to provide that information may result in criminal and civil penalties. The provision of information for the purpose of requesting a FinCEN Identifier is voluntary; however, failure to provide such information may result in the denial of such a request. Generally, the information within this collection of information may be shared as a "routine use" with other government agencies and financial institutions that meet certain criteria under applicable law. The complete list of routine uses of the information is set forth in the relevant Privacy Act system of record notice available at <https://www.federalregister.gov/documents/2023/09/13/2023-19814/privacy-act-of-1974-system-of-records>. According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is 1506-0076. It expires on November 30, 2026. The estimated average burden associated with this collection of information from reporting companies is 90 to 650 minutes per respondent for reporting companies with simple or complex beneficial ownership structures, respectively. The estimated average burden associated with reporting companies updating information previously provided is 40 to 170 minutes per respondent for reporting companies with simple or complex beneficial ownership structures, respectively. The estimated average burden associated with this collection of information from individuals applying for FinCEN identifiers is 20 minutes per applicant. The estimated average burden associated with individuals who have obtained FinCEN identifiers updating information previously provided is 10 minutes per individual. Comments regarding the accuracy of this burden estimate, and suggestions for reducing the burden should be directed to the Financial Crimes Enforcement Network, P. O. Box 39, Vienna, VA 22183, Attn: Policy Division.

Part I. Reporting Company Information

3. Request to receive FinCEN Identifier (FinCEN ID)

4. Foreign pooled investment vehicle

Full legal name and alternate name(s):

5. * Reporting Company legal name

6. Alternate name (e.g. trade name, DBA)



Form of Identification:

7. * Tax Identification type

8. * Tax Identification number

9. Country/Jurisdiction (if foreign tax ID only)

Jurisdiction of formation or first registration:

10. * a. Country/Jurisdiction of formation

Domestic Reporting Company:

b. State of formation

c. Tribal jurisdiction of formation

d. Name of the other Tribe

Foreign Reporting Company:

e. State of first registration

f. Tribal jurisdiction of first registration

g. Name of the other Tribe

Current U.S. Address:

11. * Address (number, street, and apt. or suite no.)

12. * City

13. * U.S. or U.S. Territory

14. * State

15. * ZIP Code

WARNING: A PRINTED VERSION OF THE BOI REPORTING FORM IS NOT FOR SUBMISSION AND WILL NOT BE PROCESSED BY FINCEN.

16. Existing Reporting Company (check if Reporting Company was created or registered before January 1, 2024)
17. (This item is reserved for future use)

Part II. Company Applicant Information

1 of 1

Company Applicant FinCEN ID:

18. FinCEN ID

Full legal name and date of birth:

19. * Individual's last name
20. * First name
21. Middle name
22. Suffix
23. * Date of birth

Current address:

24. * Address type a. Business address b. Residential address
25. * Address (number, street, and apt. or suite no.)
26. * City
27. * Country/Jurisdiction
28. * State
29. * ZIP/Foreign postal code

Form of identification and issuing jurisdiction:

30. * Identifying document type
31. * Identifying document number
32. * Identifying document issuing jurisdiction:
- a. Country/Jurisdiction
 - b. State
 - c. Local/Tribal
 - d. Other local/Tribal description
33. * Identifying document image

34. (This item is reserved for future use)

Part III. Beneficial Owner Information

1 of 1

35. Parent/Guardian information instead of minor child (check if the Beneficial Owner is a minor child and the parent/guardian information is provided instead)

Beneficial Owner FinCEN ID:

36. FinCEN ID

Exempt entity:

37. Exempt entity

Full legal name and date of birth:

38. * Individual's last name or entity's legal name.

39. * First name

40. Middle name

41. Suffix

42. * Date of birth

Residential address:

43. * Address (number, street, and apt. or suite no.)

44. * City

45. * Country/Jurisdiction

46. * State

47. * ZIP/Foreign postal code

Form of identification and issuing jurisdiction:

48. * Identifying document type

49. * Identifying document number

50. * Identifying document issuing jurisdiction:

a. Country/Jurisdiction

b. State

c. Local/Tribal

d. Other local/Tribal description

51. * Identifying document image