

Snell & Wilmer

Corporate Transparency Act

May 7, 2024



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Corporate Transparency Act

- Became effective January 1, 2024
- Designed
 - To combat money-laundering, sanctions evasion and other illicit activities by lifting the curtain on many private entities.
 - To enhance transparency in entity structures and ownership.
- Requires compliance by every non-exempt legal entity in the US.
 - Mandatory disclosures about the entity's beneficial owners.
 - 32 million impacted entities.



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- Who Does it Apply To:
 - Domestic corporations, LLCs, LPs, or any entity created by filing a document with a state (including certain trusts).
 - Foreign entities registered in the U.S.
- 23 exemption categories, including...
 - Tax-exempt entities - 501(c) charitable; 527(a) political; certain trusts 4947(a).
 - Public companies
 - Insurance companies, banks, and registered investment companies
 - Large operating entities
 - Inactive entities
 - Subsidiaries of certain other exempt entities



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- Large Operating Entity Exemption:
 - Employs more than 20 employees in the US; and
 - Physical office presence in the US; and
 - Greater than \$5 million in gross receipts or sales (net of returns and allowances) as reported in prior year's federal income tax return.
 - (All three required)



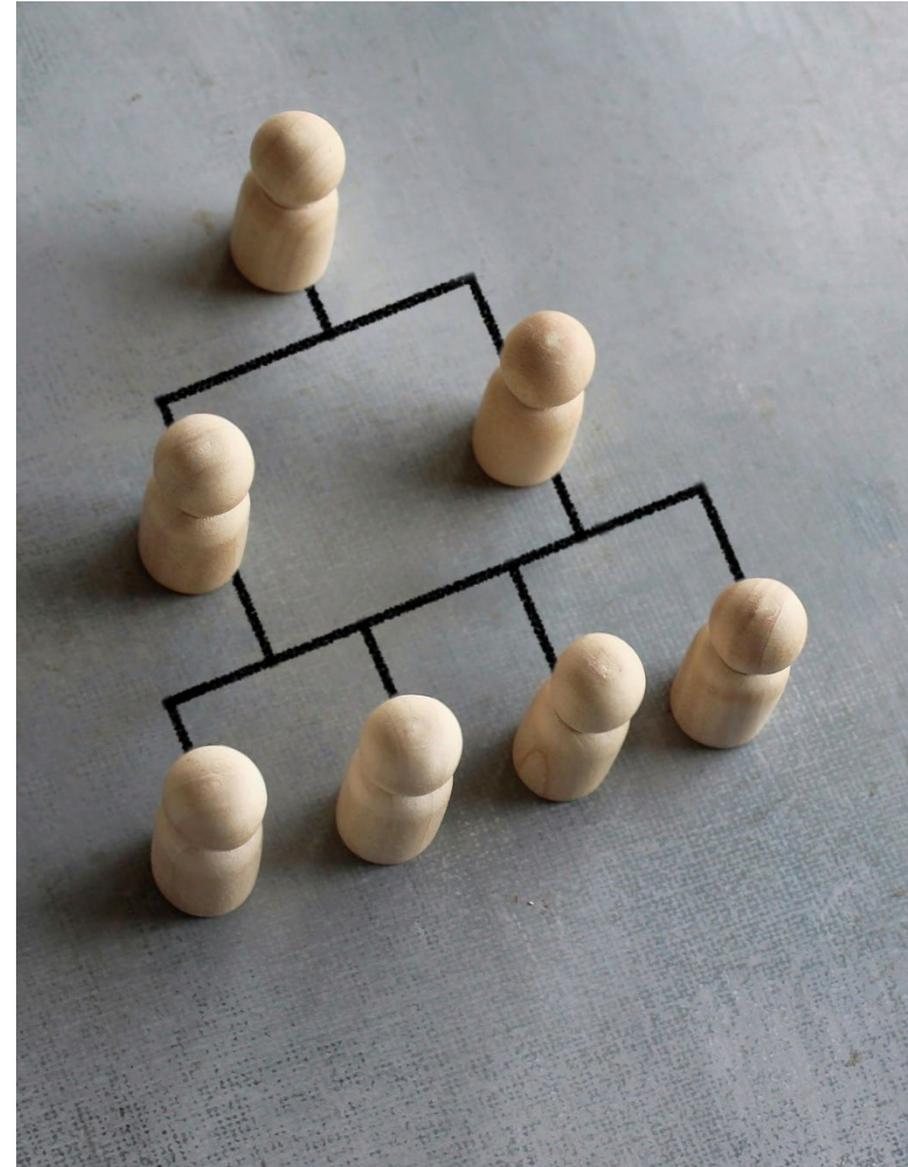
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- Inactive Entity Exemption:
 - In existence on or before Jan. 1, 2020; and
 - Not engaged in any active business; and
 - Not owned, directly or indirectly by a foreign person; and
 - No change in ownership in the past 12 months; and
 - No receipt or transmittal of more than \$1,000 in the past 12 months; and
 - No assets in the US or abroad, including any ownership interest in any other entity.
 - (All six required)



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- Subsidiary Exemption:
 - Entity's ownership interests are controlled or wholly owned, directly or indirectly, by an entity that falls within another exemption category, other than...
 - 6: Money services business
 - 18: Pooled investment vehicle
 - 23: Inactive entity



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- Beneficial Ownership Information Report (“BOI Report”)
 - When must filings be made:
 - Entities formed prior to 2024 must file by 12/31/24
 - Entities formed during 2024 must file within 90 days of formation with the state
 - Entities formed after 2024 must file within 30 days of formation with the state



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- Certain events can trigger an update or additional information, including:
 - Change of address for company/beneficial owner
 - Change in control or senior management
 - Interests pass to new beneficial owner
 - Name change
- Updated BOI Report disclosing the change must be filed within 30 days after the reporting company becomes aware (or should have been aware) of the change.

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- What Information in a BOI report must be disclosed?
 - **Company Information:**
 - Name, including any d/b/a name
 - Domicile (state of formation)
 - Physical address
 - Tax ID number
 - **Applicant(s):** Individual(s) responsible for filing documents for formation of company (only for entities formed in 2024 and after).
 - **Beneficial Owners:** Each individual who, directly or indirectly, through any contract, arrangement, understanding, relationship, or otherwise:
 - Exercises substantial control over the entity; or
 - Owns or controls at least 25% of the ownership interests of the entity

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Beneficial Ownership Reporting Exception for Exempt Owner Entities:

If an entity is a beneficial owner of a reporting company by virtue of owning or controlling at least 25% of the ownership interests of such reporting company AND that entity is itself an exempt entity (e.g., a public company), then the reporting company is only required to identify the name of the exempt entity; and is not required to provide beneficial ownership of that exempt entity's beneficial owners.

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- What must be disclosed for an Applicant or Beneficial Owner?
 - Name
 - DOB
 - Address
 - Government ID (passport; driver's license) number with an uploaded copy



Note: Applicant or beneficial owner can apply online to obtain a FinCen ID number (very easy to do), which can be used in BOI reports in lieu of providing other information and government ID.

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- **“Substantial Control” Indicators:**

- Senior officer – including CEO, President, CFO, COO or other officer performing similar functions.
- Individual with the ability to appoint or remove any senior officer or a majority of the board of directors or similar body.
- Important decision maker – individual who determines, directs or has substantial influence over important decisions of the entity, including those regarding the entity’s business, finances or structure.
- Any other form of substantial control.

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- **What is an “Ownership Interest”:**

- Stock, LLC interest, LP interest, JV interest or other equity interest, whether or not with voting rights.
- Certificate of interest in a business trust or voting trust certificate.
- Capital or profits interest in an LLC or LP.
- Convertible instruments, including notes, warrants or other rights to purchase, sell or subscribe for shares or other interests.
- Puts, calls, options and other rights or privileges for buying or selling equity, capital or profits interests.
- Any other instrument, contract, arrangement, understanding, relationship or mechanism used to establish ownership.

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Required beneficial ownership of reporting companies by trusts:

- Trustee or other individual with authority to dispose of trust assets;
- Grantor or settlor of a revocable trust with power to revoke or amend the trust agreement or revoke trust assets;
- Beneficiary who is the sole permissible recipient of trust income and principal; and
- Beneficiary who has the right to demand a distribution of or withdraw substantial assets of the trust.

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- Criminal and civil penalties for willfully providing false or fraudulent BOI in a report to FinCen, or willfully failing to make a new or updated BOI report:
 - Up to \$500 per day for each day the violation continues; AND
 - Fine of up to \$10,000 or 2 years in jail, or both.



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- Safe harbor: A person can avoid civil/criminal penalties if he/she believes a BOI report contains inaccurate information and files a correction within 90 days of the filing deadline for the original BOI report.
 - Not available to a person who knew of the inaccuracy at the time of filing of the original BOI report and acting for the purpose of evading BOI reporting requirements.



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- Useful Online Resources:

- FinCen BOI Reporting Website: <https://www.fincen.gov/boi>
- FinCen FAQ Page: <https://www.fincen.gov/boi-faqs>
- FinCen BOI Small Entity Compliance Guide:
https://www.fincen.gov/sites/default/files/shared/BOI_Small_Compliance_Guide.v1.1-FINAL.pdf

Questions?

Thank you

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