

# Locke Lord QuickStudy: The Corporate Transparency Act Is ?Now in Effect ?

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## WRITTEN BY

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As of January 1, 2024 (the “**Effective Date**”), many domestic and foreign entities formed or registered by a filing with a Secretary of State or comparable office in a State, the District of Columbia or a tribal authority (a “**State Filing Office**”), under rules adopted by the Financial Crimes Enforcement Network (“**FinCEN**”), must file a report (a “**BOI Report**”) online with FinCEN under the Corporate Transparency Act (the “**CTA**”). The initial report requires disclosures concerning the entity as well as those “individuals” owning or controlling 25% or more of the entity’s ownership interests or otherwise exercising “substantial control” over the entity.

Not every domestic or foreign entity is a “Reporting Company” under the CTA. Only those domestic corporations, domestic limited liability companies (LLCs) and other domestic entities that were or are formed at any time by a filing with a State Filing Office and those foreign entities that registered or register to do business with a State Filing Office are required to file BOI Reports (each a “**Reporting Company**”) unless a statutory exemption applies. FinCEN has taken the position that Reporting Companies can also include limited partnerships, limited liability partnerships, limited liability limited partnerships, and business trusts, because those entities are generally created by a filing with a State Filing Office. Sole proprietorships, general partnerships and common law trusts, are excluded from the definitions to the extent that they are not created by a filing with a State Filing Office.

There is no fee for filing a BOI Report with FinCEN and there is no requirement for annual or other periodic filings. However, if any of the filed information is inaccurate, changes or becomes stale, then an amendment or supplement must be filed within 30 days from the date that the filed BOI Report became stale, incomplete, inaccurate or contained an error.

Unless one of the 23 statutory exemptions applies, the initial BOI Report for each entity existing on January 1, 2024 that is a Reporting Company must be filed by January 1, 2025. For each entity that is a non-exempt Reporting Company formed during calendar year 2024, the initial filing must be made within 90 days from the date the filing was accepted by the State Filing Office. Entities formed in 2025 and later years will only have 30 days from the date the filing was accepted by the State Filing Office to make their initial filing. Filings may be made by the Reporting Company or by a third-party on its behalf. There is no requirement to file with FinCEN if an entity initially qualifies for an exemption or is otherwise not covered by the CTA filing requirements. However, the entity should document for itself and for the benefit of its beneficial owners the information necessary to prove its exempt status. If the entity, for any reason, no longer qualifies for an exemption, it must then timely file a BOI Report. If the entity has filed a BOI Report and then qualifies for an exemption, it then must file an amendment to its filed BOI Report claiming the exemption.

Among the exemptions are provisions covering large operating companies (which includes any company that employs more than 20 full-time employees in the U.S., has more than \$5,000,000 in gross receipts or sales in the U.S. on its last federal tax return, and has an operating presence at a physical office within the U.S.), public companies required to report under the Securities Exchange Act of 1934, certain tax exempt companies, certain types of regulated entities (such as insurance companies, insurance producers, banks and credit unions, brokers or dealers in securities, and registered money services businesses), investment companies, investment advisers, pooled investment vehicles and venture capital fund advisers, and subsidiaries of certain (but not all) exempt entities, provided in each case that the subsidiary's ownership interests are controlled, or wholly owned, directly or indirectly, by the exempt entity.

FinCEN has provided guidance on its [website](#) concerning the filing of BOI Reports, permitted access to the filed information and the statutory exemptions in its comprehensive [Small Entity Compliance Guide, Frequently Asked Questions](#), its [Beneficial Ownership Information Reporting Rule Fact Sheet](#) and its [Beneficial Ownership Information Access and Safeguards Final Rule Fact Sheet](#).

BOI Reports for all Reporting Companies must contain two categories of information, one relating to the Reporting Company itself and the other disclosing personal information concerning individuals who are deemed beneficial owners of the entity. For Reporting Companies formed on or after January 1, 2024, the initial BOI Report must also contain the personal information of the company applicants (as defined below) of the entity.

Under the CTA, 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 a Reporting Company. "Substantial control" is a term used very expansively in the FinCEN rule (the "**Rule**"). The Rule identifies a range of things that could constitute substantial control of a Reporting Company, including senior leadership and management positions that are deemed to have substantial control by virtue of having the authority to make important decisions on behalf of the entity, persons with power over important decisions, power to appoint or remove directors or persons in similar positions, possible organizational structures that might otherwise not be seen to provide direct decision making authority.

Similarly, the Rule deals with various ways that an individual may be deemed to own or control (directly or indirectly) 25% of the ownership or profits interests of a Reporting Company through various ownership or control structures, trusts or other mechanisms. Options, warrants, grants, convertible securities and other rights to acquire equity are deemed to be "owned" for purposes of calculating the ownership percentage of an individual whether or not exercisable or in the money. Specific examples of how control might be exercised through trusts by grantors, trustees and beneficiaries are included in the Rule and some exemptions applicable to "beneficial ownership" are also included for minors and others.

The Rule requires disclosure in the initial BOI Report by Reporting Companies formed on or after January 1, 2024 of up to two company applicants. It defines a company applicant as the individual who files the formation document with the State Filing Office to create the entity (or for a foreign reporting company, the document that first registers the entity to do business in the United States) and the individuals primarily responsible for directing or controlling the filing of the relevant document. If an individual makes the filing or a service company makes the filing for the Reporting Company, then the Reporting Company must disclose the personal information or FinCEN Identifier (a unique number issued by FinCEN to the individual for such purpose) of the individual making the filing

as a company applicant. The second company applicant disclosed in the BOI Report may be the person that requested that the filing be made, either at the entity level, its parent, one of its founders, someone at the law firm or accounting firm that sent the formation document to the service company, or other person. There is no obligation to file amendments or supplements to the initial BOI Report to update company applicant information.

BOI Reports disclose information relating to the entity and to all its “beneficial owners” as that term is used in the CTA and the Rule. For each beneficial owner, the initial BOI Report and each amendment must provide the individual’s full legal name, date of birth, residential street address, and a unique government issued identifying number (driver’s license number, passport) and issuing jurisdiction and a legible image of the applicable ID document. For Reporting Companies formed on or after January 1, 2024, the same information is required for each company applicant. However, in lieu of providing the information for each beneficial owner and company applicant, the individual may provide a FinCEN identifier.

Both individuals and entities can be liable for willful violations of the CTA reporting requirement or for causing a Reporting Company to report inaccurate, misleading or incomplete information. Senior officers at the entity at the time of the failure are also liable under the CTA for failures to file initial or amended reports, or for filing late, incomplete or inaccurate reports.

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