

## Company Law Alert: Part 1—New **Federal** Rules for Reporting Beneficial Ownership of Entities

02.06.2024 By [Simon Gerson](#)



On January 1, 2024, new federal rules promulgated pursuant to the 2021 Corporate Transparency Act (“CTA”) became effective, governing the disclosure of beneficial ownership information (“BOI”) for a Reporting Company.

These new rules, implemented by the U.S. Treasury Department's Financial Crimes Enforcement Center unit (FinCEN), are intended to provide a national company registry for BOI data for a Reporting Company. The BOI data submitted will be kept confidential, and the database will only be accessible to law enforcement, government agencies and other officials.

This database will assist FinCEN and other government agencies in efforts to uncover money laundering, tax evasion, terrorism finance and other criminal endeavors by anonymous entities and intermediary shell companies used for concealing such criminal conduct. In addition to federal (and on a more limited basis, state) law enforcement agencies, the IRS Criminal Investigations division also may access the database for investigations, sanction proceedings and collection efforts.

### What is a Reporting Company?

The rules require that every reporting company file an initial report on or after January 1, 2024. A “Reporting Company” is either as a “Domestic Reporting Company” or a “Foreign Reporting Company.”

A “Domestic Reporting Company” includes any corporation, limited liability company, or any other entity created by the filing of a document with a Secretary of State or similar state office in the U.S.

A “Foreign Reporting Company” covers any entity (including corporations and limited liability companies) formed under the laws of a foreign county that registers to do business in the U.S. by the filing of a document with a Secretary of State or other similar state office in the United States.

### Exempt Companies

The CTA identifies 23 categories of entities exempt from reporting requirements. These “exempt” entities generally include publicly traded companies meeting specific requirements, certain regulated entities, tax-exempt nonprofits, certain trusts and large operating companies.

Of particular note is the “large operating company” exemption. A company that satisfies all of the following requirements will qualify:

- Employs more than 20 full-time employees in the U.S.;
- Has an operating presence at a physical location in the U.S.; and
- Filed a federal income tax return (or information return) either on a separate or consolidated basis, during the prior year, reflecting more than \$5,000,000 in gross receipts or sales (excluding gross receipts/sales from sources outside the U.S.).

### When is the Initial Report Due?

- For all Domestic Reporting Companies and Foreign Reporting Companies formed prior to January 1, 2024, reports must be filed between January 1, 2024 and January 1, 2025.
- For all Domestic Reporting Companies formed (or Foreign Reporting Companies registering) between January 1, 2024 and January 1, 2025, reports are required to file within 90 calendar days of formation or registration.
- For all Domestic Reporting Companies formed (or Foreign Reporting Companies registering) on or after January 1, 2025, reports must be filed within 30 calendar days of formation or registration.

### What Must be Reported?

The Initial Report must include the following information:

- Legal name of the entity (including any trade name or d/b/a)
- Complete current street address of its principal place of business in the U.S.
- State or foreign jurisdiction of formation
- IRS issued Taxpayer Identification Number and Employer Identification Number and
- Identifying information regarding each “beneficial owner.”

### Who is a Beneficial Owner?

The rules define a “beneficial owner” as any individual who exercises substantial control over a Reporting Company or owns or controls at least 25% of the ownership interests of the entity.

Substantial control may be exercised by various individuals, either through the nature of the control or the ownership interest possessed. Generally, an individual exercises substantial control if the individual:

- Is a senior officer of the Reporting Company, or
- Has authority over either the appointment (or removal) of any senior officer or a majority of the board of directors (or similar body), or
- Directs, determines, or has substantial influence over important matters affecting the entity.

An “ownership interest” is broadly defined and includes:

- Any equity, stock or similar instrument
- Any capital or profits interest
- Any convertible instrument
- Any put, call, straddle, or other option, or
- Any instrument, contract, arrangement, or mechanism used to establish ownership.

The rules also establish five (5) relatively narrow exceptions from the definition of beneficial interest.

### What Beneficial Ownership Information Must Be Reported

The Reporting Company must collect and report the following data regarding each beneficial owner:

- Beneficial owner’s name,
- Date of birth,
- Residential address,
- The identifying number from a U.S. driver’s license or passport, the state of issuance or jurisdiction of the identification document, and
- A copy of the identification document

### Who is a “Company Applicant”

The individual who directly files the document that creates the domestic reporting company or registers the foreign reporting company is a “Company Applicant.” If more than one individual is involved in the filing of these company documents, then the individual who is primarily responsible for directly or controlling such filing is the Company Applicant

### Changes to Initial Report

Changes to any information previously submitted in the Initial Report or any subsequent report must be reported within 30 days after the change has occurred. These changes include any change in who is a beneficial owner or the data regarding any beneficial owner.

## Penalties for Failure to File

The CTA provides for civil penalties of up to \$500 per day that a violation continues. Failure to correct an incomplete or incorrect response will also be subject to these same civil penalties. For a Reporting Company's willful failure to file the Initial Report or any subsequent filing to report a change or to amend incorrect or incomplete information, there are criminal penalties of up to \$10,000 in fines or up to 2-years' imprisonment (or both).

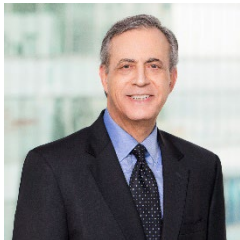
## Where can I find the Initial Report Form?

The form of the report is now available [here](#). The form is available in PDF format, requiring Adobe Reader 8 application software for completion offline, and then uploaded for online filing. In the alternative, this form may be completed and submitted online, without the need for an additional software tool.

*Author's Note:* Company Law Alert Part 2 (New Rules in **New York** for Reporting Beneficial Ownership of Limited Liability Companies) will be published one week from now.

For further information, please contact [Simon Gerson](#) or your CLL attorney.

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Simon has more than 30 years of experience counseling and attending to the varied commercial and corporate needs of established privately-held businesses and their principals.