

CORPORATE TRANSPARENCY ACT

ANSWERS TO YOUR TOP QUESTIONS

<p>Is the federal government currently enforcing the Corporate Transparency Act (“CTA”)?</p>	<p>NO. On December 3, 2024, a federal court issued a preliminary nationwide injunction prohibiting enforcement of the CTA. As a result, FinCEN has issued guidance that a “reporting company” is not currently required to file beneficial ownership information and is not subject to liability if they fail to do so while the court’s order remains in force. However, a “reporting company” may continue to voluntarily submit their beneficial ownership information report to FinCEN.</p>
<p>Does the CTA apply to S-Corporations and Professional Associations?</p>	<p>YES. If you are a for-profit company organized as an S-Corporation or a Professional Association, and do not qualify for one of the 23 exemptions listed under the CTA, you are considered a “reporting company” and are required to file a Beneficial Ownership Information (“BOI”) report. However, given the federal court’s recent order, the reporting requirements under the CTA cannot be enforced at this time.</p>
<p>Does the CTA apply if the company is a single-member limited liability company (LLC) or if there is a single home in the LLC?</p>	<p>YES. Generally, a single-member LLC is considered a reporting company under the CTA unless it meets the criteria for one of the 23 listed exemptions.</p>
<p>Does the CTA consider the number of employees employed by the company in determining whether a BOI report must be filed?</p>	<p>YES. The CTA considers the number of employees employed by the company as it relates to determining whether the company qualifies for the “Large Operating Company” exemption, which applies only if the company:</p> <ul style="list-style-type: none"> • employs at least 20 full-time employees (working at least 30 hours per week) in the U.S.; • regularly conducts its business at a physical location in the U.S. that the entity owns or leases and that is physically distinct from the place of business of any other unaffiliated entity; AND, • filed a U.S. federal tax return in the prior year showing more than \$5 million in gross receipts or sales arising from U.S. sources.
<p>Does the CTA apply if the company’s owners are foreigners?</p>	<p>YES. The CTA applies to companies owned by foreigners. If you are a small corporation or LLC, you will likely be considered a reporting company. A key factor in determining whether your company is required to report is whether you had to file a document with your state’s secretary of state or a similar office to create your company or, for foreign companies, register it to do business in the United States.</p>

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<p>Does a trust constitute a “reporting company” under the CTA?</p>	<p>IT DEPENDS.</p> <ul style="list-style-type: none"> • NO, if the registration of a trust with a court of law is merely to establish the court’s jurisdiction over any disputes involving the trust. • YES, if a domestic entity such as a statutory trust, business trust, or foundation filed a document with a secretary of state or a similar office to register to do business in the United States and an exemption does not apply.
<p>Is a limited liability company with its sole member being a trust considered a reporting company?</p>	<p>YES, a limited liability company (LLC), with its sole member being a trust, will be required to report beneficial ownership information if a document was filed with the secretary of state or similar office to create the LLC, and the LLC does not qualify for an exemption.</p> <p>Beneficial owners can own or control a reporting company through trusts by either exercising substantial control over a reporting company through a trust arrangement or by owning or controlling the ownership interests of a reporting company that are held in a trust.</p>
<p>Are homeowners associations or condo associations reporting companies?</p>	<p>IT DEPENDS.</p> <ul style="list-style-type: none"> • NO, if the association was not created by the filing of a document with a secretary of state or similar office, then it is not a domestic reporting company. • YES, if an association was created by the filing of a document with a secretary of state or similar office, it likely falls within the reporting company definition unless it qualifies for an exemption. • An association that meets the reporting company definition and does not qualify for an exception must report beneficial owners. • NOTE: There may be an instance where no individual owns or controls at least 25 percent of the ownership interests of an association that is a reporting company, notwithstanding, the expectation is that at least one individual exercises substantial control.
<p>Is a corporation created before 2024 required to file a BOI report with FinCEN?</p>	<p>YES. Reporting requirements apply to all “reporting companies” regardless of when they were created or registered unless they fall into an exemption or ceased to exist as a legal entity before January 1, 2024.</p>

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Who is a “beneficial owner” of a reporting company?	<p>A “beneficial owner” is an individual who either directly or indirectly:</p> <ul style="list-style-type: none"> • exercises substantial control over the reporting company, or • owns or controls at least 25% of the reporting company’s ownership interests.
Will the BOI reports submitted to FinCEN constitute public records or will the reports be exempt from FOIA?	Beneficial ownership information reported to FinCEN is exempt from disclosure under the Freedom of Information Act (FOIA).
Under the CTA, what is the difference between an “active” and an “inactive” company?	<p>Under the CTA, an entity qualifies for the “inactive entity” exemption if all six of the following criteria are met:</p> <ol style="list-style-type: none"> 1. The entity was in existence on or before January 1, 2020. 2. The entity is not engaged in active business. 3. The entity is not owned by a foreign person, whether directly or indirectly, wholly or partially. 4. The entity has not experienced any change in ownership in the preceding twelve-month period. 5. The entity has not sent or received any funds in an amount greater than \$1,000, either directly or through any financial account in which the entity or any affiliate of the entity had an interest, in the preceding twelve-month period. 6. The entity does not otherwise hold any kind or type of assets, whether in the U.S. or abroad, including any ownership interest in any corporation, limited liability company, or other similar entity.
Are nonprofit organizations required to file BOI information to FinCEN?	Most nonprofit organizations are exempt from the CTA because the law does not require tax-exempt organizations described in the Internal Revenue Code Section 501(c) to report.
What constitutes a reason to file an update to your BOI report?	If there is any change to the required information about your company or its beneficial owners in a beneficial ownership information report that your company filed, your company must file an updated report no later than 30 days after the date of the change. Triggers include changes to the information reported for the reporting company, change in beneficial owners, change to beneficial owner’s names, address, or identifying number.

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