

The Corporate Transparency Act

April 25, 2024

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OMAR FIGUEROA

LAW OFFICES OF OMAR FIGUEROA

About Omar Figueroa

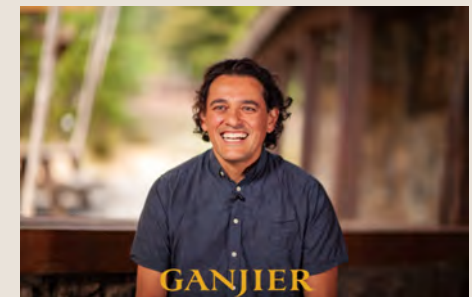
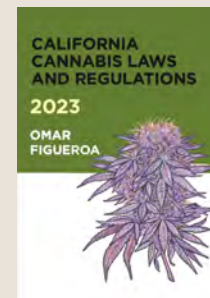
Omar is the Founder and Managing Partner of the Law Offices of Omar Figueroa, based in Sebastopol.

Omar sits on the Board of Directors of the Sonoma County Bar Association as well as the Board of Directors of the Sebastopol Center for the Arts.

Omar graduated from Yale College, Stanford Law School, and the Trial Lawyers College.

He is also the author of a series of legal reference works documenting the evolution of cannabis laws and regulations and his books can be found in libraries at institutions such as Stanford Law School, Yale Law School, and Cal Poly Humboldt.

Omar is a founding member of the Ganjier Council and helped develop a curriculum for training Ganjiers (cannabis sommeliers).



Learning Objectives

Corporate Transparency Act

- Introduction to CTA
- Companies subject to Reporting Rule
- 23 specific types of entities are exempt from the reporting requirements

Beneficial Owner

- Definition of Beneficial Owner
- 5 exceptions to the definition of beneficial owner

BOIR (Beneficial Ownership Information Report)

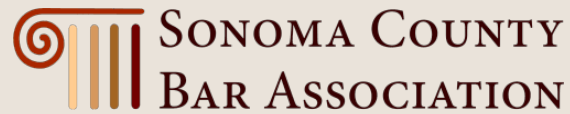
- FinCEN identifier

Constitutional Challenges to the Corporate Transparency Act

- National Small Business United v. Yellen (N.D. Alabama)
- Appeal Pending Before Eleventh Circuit

Q&A





Corporate Transparency Act

Introduction to CTA

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Introduction to the Corporate Transparency Act

- The Corporate Transparency Act of 2019 was intended to make it easier to investigate illicit activities using shell companies such as money laundering, the financing of terrorism, serious tax fraud, human and drug trafficking, securities fraud, and financial fraud.

SEC. 2. FINDINGS.

Congress finds the following:

- (1) Nearly 2,000,000 corporations and limited liability companies are being formed under the laws of the States each year.
- (2) Very few States require information about the beneficial owners of the corporations and limited liability companies formed under their laws.
- (3) A person forming a corporation or limited liability company within the United States typically provides less information at the time of incorporation than is needed to obtain a bank account or driver's license and typically does not name a single beneficial owner.



Introduction to the Corporate Transparency Act

- Congressional findings:

(4) Criminals have exploited State formation procedures to conceal their identities when forming corporations or limited liability companies in the United States, and have then used the newly created entities to commit crimes affecting interstate and international commerce such as terrorism, proliferation financing, drug and human trafficking, money laundering, tax evasion, counterfeiting, piracy, securities fraud, financial fraud, and acts of foreign corruption.

(5) Law enforcement efforts to investigate corporations and limited liability companies suspected of committing crimes have been impeded by the lack of available beneficial ownership information, as documented in reports and testimony by officials from the Department of Justice, the Department of Homeland Security, the Department of the Treasury, and the Government Accountability Office, and others.

(8) In contrast to practices in the United States, all 28 countries in the European Union are required to have corporate registries that include beneficial ownership information.

(9) To reduce the vulnerability of the United States to wrongdoing by United States corporations and limited liability companies with hidden owners, to protect interstate and international commerce from criminals misusing United States corporations and limited liability companies, to strengthen law enforcement investigations of suspect corporations and limited liability companies, to set a clear, universal standard for State incorporation practices, and to bring the United States into compliance with international anti-money laundering standards, Federal legislation is needed to require the collection of beneficial ownership information for the corporations and limited liability companies formed under the laws of such States.

Corporate Transparency Act: Congressional Findings

- Federal legislation is needed to require the collection of beneficial ownership information for corporations and limited liability companies in order to:
 - Reduce the vulnerability to wrongdoing by United States corporations and limited liability companies with hidden owners
 - Protect interstate and international commerce from criminals misusing United States corporations and limited liability companies
 - Strengthen law enforcement investigations of suspect corporations and limited liability companies
 - Set a clear, universal standard for State incorporation practices, and
 - Bring the United States into compliance with international anti-money laundering standards



“(1) BENEFICIAL OWNERSHIP REPORTING.—

“(A) IN GENERAL.—Each applicant to form a corporation or limited liability company under the laws of a State or Indian Tribe shall file a report with FinCEN containing a list of the beneficial owners of the corporation or limited liability company that—



FinCEN: Financial Crimes Enforcement Network

- FinCEN is a bureau of the Department of the Treasury
- FinCEN is the nation’s primary regulator responsible for implementing the Bank Secrecy Act
- FinCEN’s mission is to:
 - Safeguard the financial system from illicit use
 - Combat money laundering and its related crimes including terrorism, and
 - Promote national security through the strategic use of financial authorities and the collection, analysis, and dissemination of financial intelligence
- The Director of FinCEN is appointed by the Secretary of the Treasury
- In July 2023, Treasury Secretary Janet Yellen appointed Andrea Gacki as FinCEN Director.
- Gacki was the former head of the Office of Foreign Assets Control (OFAC)



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CTA Reporting Rule

- The Reporting Rule requires certain entities to file beneficial ownership information (BOI) reports with FinCEN
- Reports contain information about the entity itself and two categories of individuals:
 - Beneficial owners, and
 - Company applicants
- In general, a beneficial owner is an individual who owns or controls at least 25 percent of a company or has substantial control over the company
- A company applicant is an individual who directly files or is primarily responsible for the filing of the document that creates or registers the company



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CTA Reporting Rule

- The Reporting Rule is found in title 31 of the Code of Federal Regulations at § 1010.380

§ 1010.380 Reports of beneficial ownership information.

(a) *Reports required; timing of reports* —

(1) **Initial report.** Each reporting company shall file an initial report in the form and manner specified in paragraph (b) of this section as follows:

(i)

(A) Any domestic reporting company created on or after January 1, 2024, and before January 1, 2025, shall file a report within 90 calendar days of the earlier of the date on which it receives actual notice that its creation has become effective or the date on which a secretary of state or similar office first provides public notice, such as through a publicly accessible registry, that the domestic reporting company has been created.



Existing reporting companies

Created or registered to do business in the United States before January 1, 2024.
Reports due by **January 1, 2025**.

CTA: Filing Deadlines

- Starting on January 1, 2024, BOI reports must be filed electronically using FinCEN's secure filing system
- Reporting companies created or registered to do business before January 1, 2024, will have additional time — until January 1, 2025 — to file their initial BOI reports.
- Reporting companies created or registered on or after January 1, 2024, and before January 1, 2025, have 90 calendar days to file their initial BOI reports.
- Specifically, this 90-calendar day deadline runs from the time the company receives actual notice that its creation or registration is effective, or after a secretary of state or similar office first provides public notice of its creation or registration, whichever is earlier.



New reporting companies

Created or registered to do business in the United States on or after January 1, 2024.
Reporting companies created or registered **on or after January 1, 2024** and **before January 1, 2025**, have **90 calendar days** after receiving actual or public notice that their company's creation or registration is effective to file their initial BOI reports.



Reporting companies created or registered **on or after January 1, 2025**, will have **30 calendar days** from receipt of actual or public notice that their creation or registration is effective to file their initial BOI reports.

CTA: Filing Deadlines

- Reporting companies created or registered on or after January 1, 2025, will have 30 calendar days to file their initial BOI reports.
- If there is any change to the required information about a company or its beneficial owners in a BOI report that a company filed, the company must file an updated BOI report no later than 30 days after the date on which the change occurred.



UPDATED REPORTS

Required when there is a change to previously reported information about the reporting company itself or its beneficial owners.



Updated reports due within **30 calendar days** after a change occurs.



Corporate Transparency Act

Companies Subject to the Reporting Rule

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CTA: Companies Subject to the Reporting Rule

- There are two general categories of companies which have to report:
- Foreign reporting companies, created under the laws of a foreign country, registered to do business in any State or tribal jurisdiction by filing a document with the secretary of state or similar office
- Domestic reporting companies, created under the laws of any State or Indian tribe by filing document with the secretary of state or similar office

- States means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, American Samoa, Guam, the United States Virgin Islands, and any other commonwealth, territory, or possession of the United States.
- Indian tribes means any Indian or Alaska Native tribe, band, nation, pueblo, village or community that the Secretary of the Interior acknowledges to exist as an Indian tribe. (See section 102 of the Federally Recognized Indian Tribe List Act of 1994 ([25 U.S.C. 5130](#))).



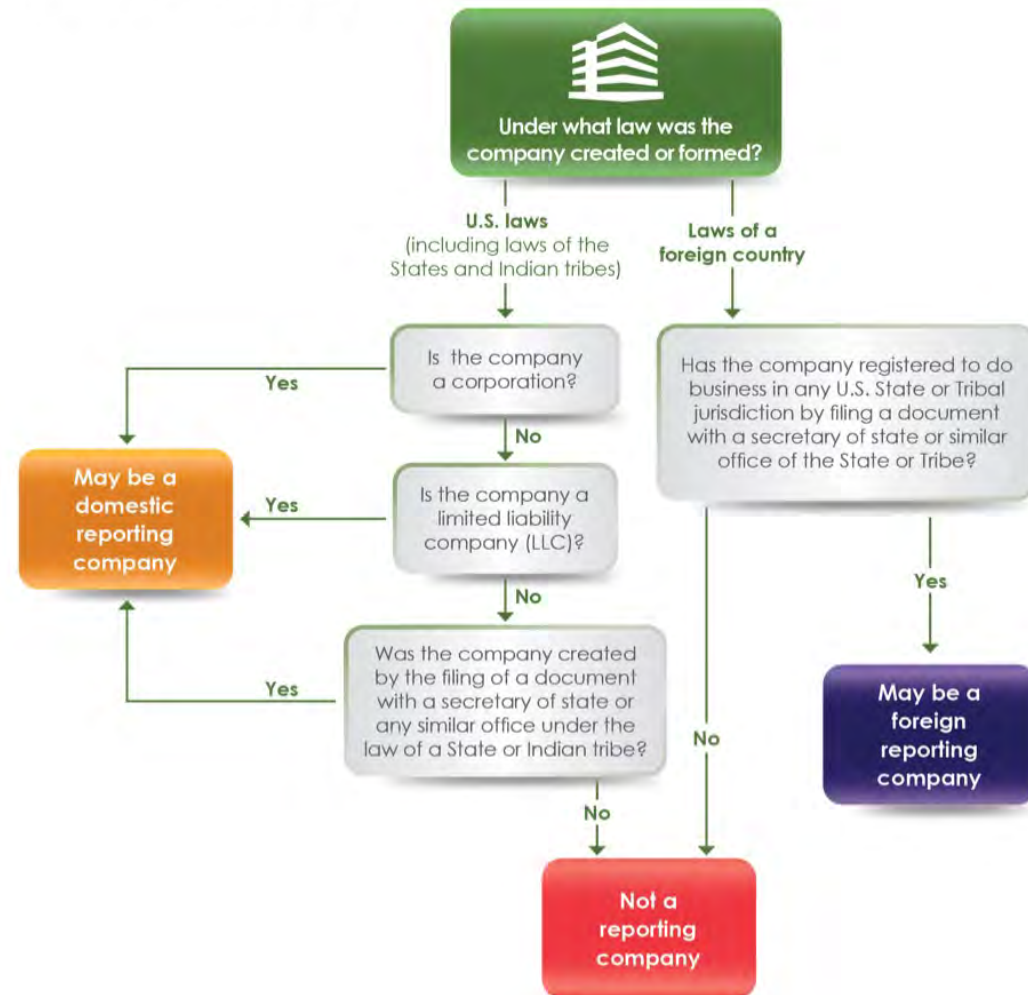
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Small Entity Compliance Guide



<https://www.fincen.gov/boi>

Chart 1 – Reporting company definition





Corporate Transparency Act

23 Types of Entities Exempt From
Reporting Requirements

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Chart 2 – Reporting company exemptions

Exemption No.	Exemption Short Title
1	Securities reporting issuer
2	Governmental authority
3	Bank
4	Credit union
5	Depository institution holding company
6	Money services business
7	Broker or dealer in securities
8	Securities exchange or clearing agency
9	Other Exchange Act registered entity
10	Investment company or investment adviser
11	Venture capital fund adviser
12	Insurance company
13	State-licensed insurance producer
14	Commodity Exchange Act registered entity
15	Accounting firm
16	Public utility
17	Financial market utility
18	Pooled investment vehicle
19	Tax-exempt entity
20	Entity assisting a tax-exempt entity
21	Large operating company
22	Subsidiary of certain exempt entities
23	Inactive entity

Small Entity Compliance Guide



The criteria for each exemption are provided in a check-box format in the following pages to assist your company in answering the question, “Is my company exempt from the reporting requirements?”

Securities reporting issuer (Exemption #1)

An entity qualifies for this exemption if **either** of the following two criteria apply:

1. The entity is an issuer of a class of securities registered under section 12 of the Securities Exchange Act of 1934 ([15 U.S.C. 78](#)).

Yes No

2. The entity is required to file supplementary and periodic information under section 15(d) of the Securities Exchange Act of 1934 ([15 U.S.C. 78o\(d\)](#)).

Yes No

Public accounting firm (Exemption #15)

An entity qualifies for this exemption if the following criterion applies:

1. The entity is a public accounting firm registered in accordance with section 102 of the Sarbanes-Oxley Act of 2002 ([15 U.S.C. 7212](#)).

Yes No

Large operating company (Exemption #21)

An entity qualifies for this exemption if all **six** of the following criteria apply:

1. The entity employs more than 20 full time employees, when applying the meaning of full-time employee provided in [26 CFR 54.4980H-1\(a\)](#) and [54.4980H-3](#). In general, “full-time employee” means, with respect to a calendar month, an employee who is employed an average of at least 30 hours of service per week with an employer.

Yes No

2. More than 20 full-time employees of the entity are employed in the “United States,” as that term is defined in [31 CFR 1010.100\(hhh\)](#).

Yes No

Large operating company (Exemption #21)

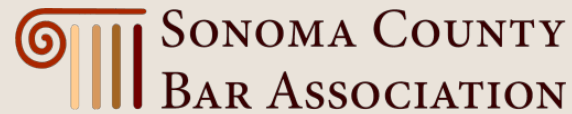
An entity qualifies for this exemption if all **six** of the following criteria apply:

3. The entity has an operating presence at a physical office within the United States. “Operating presence at a physical office within the United States” means that an entity regularly conducts its business at a physical location in the United States that the entity owns or leases and that is physically distinct from the place of business of any other unaffiliated entity.

4. The entity entity filed a Federal income tax or information return in the United States for the previous year demonstrating more than \$5,000,000 in gross receipts or sales. If the entity is part of an affiliated group of corporations within the meaning of [26 U.S.C. 1504](#), refer to the consolidated return for such group.

5. The entity reported this greater-than-\$5,000,000 amount as gross receipts or sales (net of returns and allowances) on the entity’s [IRS Form 1120](#), consolidated [IRS Form 1120](#), [IRS Form 1120-S](#), [IRS Form 1065](#), or other applicable IRS form.

6. When gross receipts or sales from sources outside the United States, as determined under Federal income tax principle, are excluded from the entity’s amount of gross receipts or sales, the amount remains greater than \$5,000,000.



Beneficial Owner

Definition of Beneficial Owner

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“(1) BENEFICIAL OWNERSHIP REPORTING.—

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Definition of Beneficial Owner

- A beneficial owner is any individual who, directly or indirectly:
 - Exercises substantial control over a reporting company, or
 - Owns or controls at least 25 percent of the ownership interests of a reporting company.
- An individual might be a beneficial owner through substantial control, ownership interests, or both.
- Reporting companies are not required to report the reason (i.e., substantial control and/or ownership interests) that an individual is a beneficial owner.
- A reporting company can have multiple beneficial owners. There is no maximum number of beneficial owners who must be reported.
- FinCEN expects that every reporting company will be substantially controlled by one or more individuals, and therefore that every reporting company will be able to identify and report at least one beneficial owner to FinCEN.



SENIOR OFFICER

any individual holding the position or exercising the authority of a:

1. President
2. Chief financial officer (CFO)
3. General counsel (GC)
4. Chief executive officer (CEO)
5. Chief operating officer (COO)

or any other officer, regardless of official title, who performs a similar function as these officers



APPOINTMENT OR REMOVAL AUTHORITY

any individual with the ability to appoint or remove any **SENIOR OFFICER** or a majority of the board of directors or similar body

Beneficial Owner: Indicators of Substantial Control

- An individual exercises substantial control over a reporting company if the individual meets any of four general criteria:
 1. the individual is a senior officer;
 2. the individual has authority to appoint or remove certain officers or a majority of directors of the reporting company;
 3. the individual is an important decision-maker; or
 4. the individual has any other form of substantial control over the reporting company.



IMPORTANT DECISION-MAKER

any individual who directs, determines, or has substantial influence over important decisions made by the reporting company, including decisions regarding the reporting company's:

1. **Business**, such as:
 - Nature, scope, and attributes of the business
 - The selection or termination of business lines or ventures, or geographic focus
 - The entry into or termination, or the fulfillment or non-fulfillment, of significant contracts
2. **Finances**, such as:
 - Sale, lease, mortgage, or other transfer of any principal assets
 - Major expenditures or investments, issuances of any equity, incurrence of any significant debt, or approval of the operating budget
 - Compensation schemes and incentives programs for senior officers
3. **Structure**, such as:
 - Reorganization, dissolution, or merger
 - Amendments of any substantial governance documents of the reporting company, including the articles of incorporation or similar formation documents, bylaws, and significant policies or procedures



CATCH-ALL

any other form of substantial control over the reporting company. Control exercised in new and unique ways can still be substantial. For example, flexible corporate structures may have different indicators of control than the indicators included here



EQUITY, STOCK, OR VOTING RIGHTS

any interest classified as stock or anything similar, regardless whether it confers voting power or voting rights, and even if the interest is transferable

EXAMPLES include:

- equity, stock, or similar instrument
- preorganization certificate or subscription
- transferable share of, or voting trust certificate or certificate of deposit for, an equity security, interest in a joint venture, or certificate of interest in a business trust



CAPITAL OR PROFIT INTEREST

any interest in the assets or profits of a company organized as an LLC, which is similar to stock in a corporation and sometimes referred to as a 'unit'



CATCH-ALL

any other instrument, contract, arrangement, understanding, relationship, or mechanism used to establish ownership

Beneficial Owner: Ownership Interests

- Reporting companies are required to identify all individuals who own or control at least 25 percent of the ownership interests of the company.
- A reporting company may have multiple types of ownership interests.
- Any of the following may be an ownership interest:
 - equity, stock, or voting rights;
 - a capital or profit interest;
 - convertible instruments;
 - options or other non-binding privileges to buy or sell any of the foregoing;
 - and any other instrument, contract, or other mechanism used to establish ownership.



CONVERTIBLE INSTRUMENTS

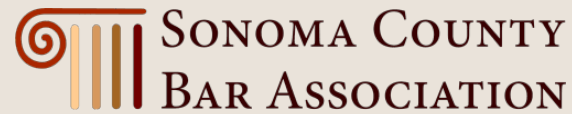
any instrument convertible into **equity, stock, or voting rights** or **capital or profit interest**, whether or not anything needs to be paid to exercise the conversion. The **RELATED** items are also ownership interests:

- any future on any convertible instrument
- any warrant or right to purchase, sell, or subscribe to a share or interest in **equity, stock, or voting rights** or **capital or profit interest**, even if such warrant or right is a debt



OPTION OR PRIVILEGE

any put, call, straddle, or other option or privilege of buying or selling **equity, stock, or voting rights, capital or profit interest, or convertible instruments**, EXCEPT if the option or privilege is created and held by others without the knowledge or involvement of the reporting company



Beneficial Owner

Five Exceptions to the
Definition of Beneficial Owner

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Exceptions to the Definition of Beneficial Owner

- There are five exceptions to the definition of beneficial owner.
 - Minor Child
 - Nominee, intermediary, custodian, or agent (e.g., tax professionals / advisory services)
 - Employee
 - Inheritor
 - Creditor
- When an individual who would otherwise be a beneficial owner of a reporting company qualifies for an exception, the reporting company does not have to report that individual as a beneficial owner in its BOI report to FinCEN.



Minor Child (Exception #1)

An individual qualifies for this exception if the following criterion applies:

1. The individual is a minor child, as defined under the law of the State or Indian tribe in which the domestic reporting company is created or the foreign reporting company is first registered.

Yes No

Nominee, intermediary, custodian, or agent (Exception #2)

An individual qualifies for this exception if the following criterion applies:

2. The individual merely acts on behalf of an actual beneficial owner as the beneficial owner's nominee, intermediary, custodian, OR agent.

Note: Individuals who perform ordinary advisory or other contractual services (such as tax professionals) likely qualify for this exception. In scenarios where this exception applies, the actual beneficial owner must still be reported.

Yes No

Employee (Exception #3)

An individual qualifies for this exception if **all three** of the following criteria apply:

<p>1. The individual is an employee of the reporting company, when applying the meaning of “employee” provided in 26 CFR 54.4980H-1(a)(15). In general, the term employee means that an individual is subject to the will and control of the employer in what and how to do work, and that the employer may discharge the individual from work.</p>	<p><input type="checkbox"/> Yes <input type="checkbox"/> No</p>
<p>2. The individual’s substantial control over, or economic benefits from, the reporting company are derived solely from the employment status of the individual as an employee.</p>	<p><input type="checkbox"/> Yes <input type="checkbox"/> No</p>
<p>3. The individual is not a senior officer of the reporting company. The term “senior officer” means any individual holding the position or exercising the authority of a president, chief financial officer, general counsel, chief executive officer, or chief operating officer, or any other officer, regardless of official title, who performs a similar function.</p>	<p><input type="checkbox"/> Yes <input type="checkbox"/> No</p>

Inheritor (Exception #4)

An individual qualifies for this exception if the following criterion applies:

1. The individual's only interest in the reporting company is a **future** interest through a right of inheritance, such as through a will providing a future interest in a company.

Yes No

Creditor (Exception #5)

An individual qualifies for this exception if the following criterion applies:

1. The individual is a creditor of the reporting company.

The term "creditor" means an individual who would meet the definition of a beneficial owner of the reporting company solely through rights or interests for the payment of a predetermined sum of money, such as a debt incurred by the reporting company, or a loan covenant or other similar right associated with such right to receive payment that is intended to secure the right to receive payment or enhance the likelihood of repayment.

For example, an individual qualifies for the creditor exception if the individual is entitled to payment from the reporting company to satisfy a loan or debt, so long as this entitlement is the only ownership interest the individual has in the reporting company.

Yes No



Beneficial Owner

Beneficial Ownership Information Report

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https://boiefiling.fincen.gov/



**FINANCIAL CRIMES
ENFORCEMENT NETWORK**

BOI E- FILING | **FILE BOIR** | **HELP**

File the Beneficial Ownership Information Report (BOIR)

Select the filing method that works best for you:



PDF ↓

File PDF BOIR

- Adobe Reader is required
- Prepare report offline at your own pace, save as you go
- Reuse PDF BOIR when filing updates/corrections
- Download BOIR transcript upon submission

Prepare BOIR **Submit BOIR**



WEB

<https://boiefiling.fincen.gov/>

Beneficial Ownership Information Report

Home Reporting Company Company Applicant(s) Beneficial Owner(s)

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

Beneficial Ownership Information Report

Home Reporting Company Company Applicant(s) Beneficial Owner(s)

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

Beneficial Ownership Information Report

Home Reporting Company Company Applicant(s) Beneficial Owner(s)

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 inform)

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:

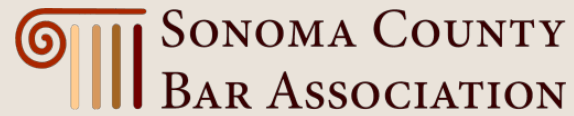
a. Country/Jurisdiction

b. State

c. Local/Tribal

d. Other local/Tribal description

51. * Identifying document image



Beneficial Owner

FinCEN Identifier

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A FinCEN ID is a 12-digit number. FinCEN IDs for individuals start with 3, and FinCEN IDs for entities start with 2. Example: 300000000000.

FinCEN ID

- A “FinCEN identifier” is a unique identifying number that FinCEN will issue to an individual or reporting company upon request after the individual or reporting company provides certain information to FinCEN.
- An individual or reporting company is not required to obtain a FinCEN identifier.
- An individual or reporting company may only receive one FinCEN identifier.
- A company may include FinCEN identifiers in its BOI report instead of certain required information about beneficial owners or company applicants.

What does a FinCEN ID do? An individual’s FinCEN ID can be reported instead of certain other required information on a BOIR submitted to FinCEN. If you have a FinCEN ID, for example, that FinCEN ID can be submitted on a BOIR instead of your name, date of birth, address, and unique identifying document number, jurisdiction, and image. This will make it easier to file BOIRs.



FinCEN ID

Beneficial Ownership Information Report

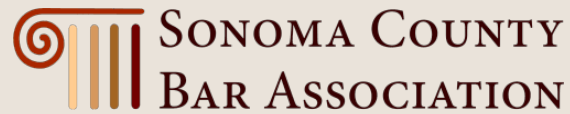
Home Reporting Company Company Applicant(s) Beneficial Owner(s)

Part I. Reporting Company Information

3. Request to receive FinCEN Identifier (FinCEN ID)

- Individuals may electronically apply for FinCEN identifiers at:
<https://fincenid.fincen.gov/>
- A company may request a FinCEN identifier when it submits a BOI report by checking a box on the reporting form.
- Those who receive a FinCEN identifier are required to update the information on an ongoing basis

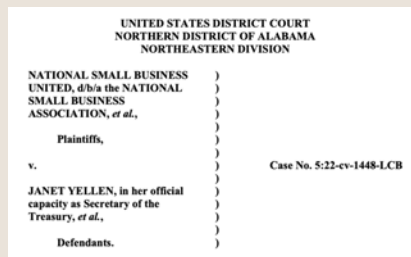
COMPLIANCE NOTE: If you request and receive a FinCEN ID, you are required to update or correct the information you provided to FinCEN. You must do this on an ongoing basis to keep the information related to the FinCEN ID up to date.



Constitutional Challenges

National Small Business United v. Yellen (N.D. Alabama)

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The Government's arguments are not supported by precedent. Because the CTA exceeds the Constitution's limits on the legislative branch and lacks a sufficient nexus to any enumerated power to be a necessary or proper means of achieving Congress' policy goals, the Plaintiffs are entitled to judgment as a matter of law. As

National Small Business United v. Yellen

- On March 1, 2024, federal judge Liles Burke of the Northern District of Alabama issued an opinion considering the constitutionality of the CTA against challenges that it was beyond the constitutional authority of Congress.
- The Court considered and rejected the three sources of constitutional authority proffered by the government:
 - Congress' extensive powers over foreign affairs and national security
 - The Commerce Clause
 - Congress' power to levy taxes
- The Court declared the Corporate Transparency Act unconstitutional because the "CTA exceeds the Constitution's limits on the legislative branch and lacks a sufficient nexus to any enumerated power to be a necessary or proper means of achieving Congress' policy goals."

Alert: Notice Regarding *National Small Business United v. Yellen*, No. 5:22-cv-01448 (N.D. Ala.)

Updated March 11, 2024

On March 1, 2024, in the case of *National Small Business United v. Yellen*, No. 5:22-cv-01448 (N.D. Ala.), a federal district court in the Northern District of Alabama, Northeastern Division, entered a final declaratory judgment, concluding that the Corporate Transparency Act exceeds the Constitution's limits on Congress's power and enjoining the Department of the Treasury and FinCEN from enforcing the Corporate Transparency Act against the plaintiffs.

FinCEN is complying with the court's order and will continue to comply with the court's order for as long as it remains in effect. As a result, the government is not currently enforcing the Corporate Transparency Act against the plaintiffs in that action: Isaac Winkles, reporting companies for which Isaac Winkles is the beneficial owner or applicant, the National Small Business Association, and members of the National Small Business Association (as of March 1, 2024). Those individuals and entities are not required to report beneficial ownership information to FinCEN at this time.

National Small Business United v. Yellen Appeal

- FinCEN has put a notice on its web explaining the decision and subsequent appeal.
- On March 11, a Notice of Appeal was filed and the appeal is now pending before the Eleventh Circuit
- While the appeal is ongoing FinCEN will continue to enforce the CTA
- In general, reporting companies are still required to comply with the law and file beneficial ownership reports
- Only the specific individuals and entities subject to the court's injunction, such as members of the National Small Business Association as of March 1, 2024, are not required to report at this time

The Justice Department, on behalf of the Department of the Treasury, filed a Notice of Appeal on March 11, 2024. While this litigation is ongoing, FinCEN will continue to implement the Corporate Transparency Act as required by Congress, while complying with the court's order. Other than the particular individuals and entities subject to the court's injunction, as specified below, reporting companies are still required to comply with the law and file beneficial ownership reports as provided in FinCEN's regulations.



National Small Business v. U.S. Dept of Treasury

- On April 15, the U.S. Department of Treasury filed its opening Brief for the Appellants



THE CORPORATE TRANSPARENCY ACT IS A VALID EXERCISE OF CONGRESS'S POWERS

- A. Congress Has Broad Authority to Enact Economic Regulations.....
- B. The CTA Permissibly Effectuates Prohibitions on Financial Crime.....
- C. The District Court's Approach Misunderstands Governing Precedent and the CTA Itself



**BRIEF OF SENATORS SHELDON WHITEHOUSE, RON WYDEN,
ELIZABETH WARREN, JACK REED, AND REPRESENTATIVE MAXINE
WATERS AS *AMICI CURIAE* IN SUPPORT OF DEFENDANTS-
APPELLANTS**

National Small Business v. U.S. Dept of Treasury

- On April 22, members of Congress submitted an amici brief in support of the CTA



ARGUMENT.....

I. Congress Has Robust Article I Authorities.

II. The Corporate Transparency Act Is a Legitimate Exercise of Congress’s Authorities.

A. National Security and Foreign Affairs

B. Interstate and Foreign Commerce

C. Tax

Materials

- Text of Corporate Transparency Act, codified at 31 U.S.C. § 5336
- Text of regulations, codified at 31 C.F.R. § 1010.380
- FinCEN Small Entity Compliance Guide: Beneficial Ownership Information Reporting Requirements, Version 1.1, December 2023
- FinCEN Identifier Application Filing Instructions, Version 1.0, January 2024
- March 1, 2024 Memorandum Opinion by the US District Court in Alabama declaring the Corporate Transparency Act unconstitutional



§ 5336. Beneficial ownership information reporting requirements

31 CFR 1010.380 (up to date as of 4/19/2024)
Reports of beneficial ownership information.

31 CFR 1010.380 (Apr. 19, 2024)

This content is from the eCFR and is authoritative but unofficial.

Title 31—Money and Finance
Subtitle B—Regulations
Chapter X—Financial Crimes Enforcement Network
Part 1010—Reporting Requirements
Subpart C—Beneficial Ownership Information
Authority: 31 CFR 1010.380
Source: 71 FR 10100-01

§ 1010.380 Reporting Requirements

(a) Report

(1) Small Entity

Beneficial Information

FinCEN Reporting

Case 5:22-cv-01448-LCH Document 51 Filed 03/01/24 Page 1 of 53

FILED
DISTRICT COURT
U.S. DISTRICT COURT
N.D. OF ALABAMA

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ALABAMA
NORTHEASTERN DIVISION

NATIONAL SMALL BUSINESS
UNITED, d/b/a the NATIONAL
SMALL BUSINESS
ASSOCIATION, et al.,
Plaintiffs,
v.
JANET YELLEN, in her official
capacity as Secretary of the
Treasury, et al.,
Defendants.

Case No. 5:22-cv-1448-LCH

MEMORANDUM OPINION

The late Justice Antonin Scalia once remarked that federal judges should have a rubber stamp that says STUPID BUT CONSTITUTIONAL. See Jennifer Senior, *In Conversation: Antonin Scalia*, New York Magazine, Oct. 4, 2013. The Constitution, in other words, does not allow judges to strike down a law merely because it is burdensome, foolish, or offensive. Yet the inverse is also true—the wisdom of a policy is no guarantee of its constitutionality. Indeed, even in the pursuit of sensible and praiseworthy ends, Congress sometimes enacts smart laws that violate the Constitution. This case, which concerns the constitutionality of the Corporate Transparency Act, illustrates that principle.



Materials

- FinCEN: “UPDATED: Notice Regarding Small Business United v. Yellen” stating a Notice of Appeal has been filed and noting that the government is not currently enforcing the Corporate Transparency Act against plaintiffs in that action, Updated March 11, 2024.
- Brief filed by Defendants Appellants, Department of Treasury, et al, Filed April 15, 2024
- Brief filed by Amici Curiae Senators Sheldon Whitehouse, Ron Wyden, Elizabeth Warren, Jack Reed, and Representative Maxine Waters, Filed on April 22, 2024
- Brief filed by Amicus Curiae Tax Law Center at NYU Law, Filed on April 22, 2024

UPDATED: Notice Regarding National Small Business United v. Yellen, No. 5:22-cv-01448 (N.D. Ala.)

Issuance Release: 10/23/24, 2024

Updated March 11, 2024

On March 11, 2024, in the case of National Small Business United v. Yellen, No. 5:22-cv-01448 (N.D. Ala.), a federal district court in the Northern District of Alabama, Northeastern Division, entered a final declaratory judgment, concluding that the Corporate Transparency Act exceeds the Constitution's limits on Congress's power and rejecting the Department of the Treasury and FinCEN's enforcement of the Corporate Transparency Act against the plaintiffs. The Justice Department, an official of the Department of the Treasury, filed a Notice of Appeal on March 11, 2024. While this litigation is ongoing, FinCEN will continue to implement the Corporate Transparency Act as required by Congress, while complying with the court's order. Other than the particular individuals and entities subject to the court's suspension, as specified below, reporting companies are still required to comply with the law and the beneficial ownership reports as provided in FinCEN's regulations.

FinCEN is complying with the court's order and will continue to comply with the court's order to the extent it remains in effect. As a result, the government is not currently enforcing the Corporate Transparency Act against the plaintiffs in that action. Issue: Whether, reporting companies for which issue: Whether is the beneficial owner or applicant, the National Small Business Association, and members of the National Small Business Association as of March 1, 2020. These individuals and entities are not required to report beneficial ownership information to FinCEN at this time.

Updated March 11, 2024: This notice was updated on March 11, 2024, to reflect that a Notice of Appeal (Notice of Appeal) has been filed regarding this case.

USCA11 Case: 24-10736 Document: 15 Date Filed: 04/15/2024 Page: 1 of 55

USCA11 Case: 24-10736 Document: 30 Date Filed: 04/22/2024 Page: 1 of 21

USCA11 Case: 24-10736 Document: 27 Date Filed: 04/22/2024 Page: 1 of 28

No. 24-10736

In the United States Court of Appeals
for the Eleventh Circuit

NATIONAL SMALL BUSINESS UNITED, ET AL.,
Plaintiffs-Appellants,

v.
U.S. DEPARTMENT OF THE TREASURY, ET AL.,
Defendants-Appellants.

On Appeal from the United States District Court
for the Northern District of Alabama
Case No. 22-cv-01448-LJB (The Hon. J. Lee C. Burke)

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BRIEF
ELIZABE
WAI

BRIEF OF AMICUS CURIAE
TAX LAW CENTER AT NYU/LAW
IN SUPPORT OF APPELLANTS

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April 22, 2024

Consent for Service (Signed)

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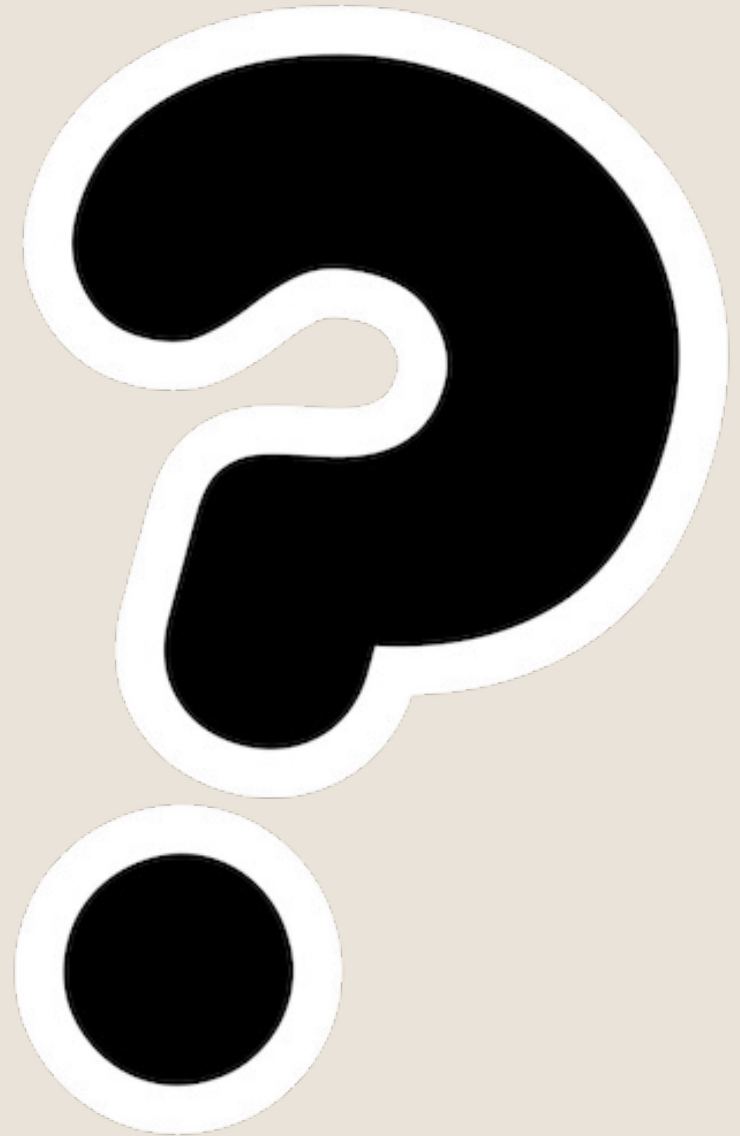
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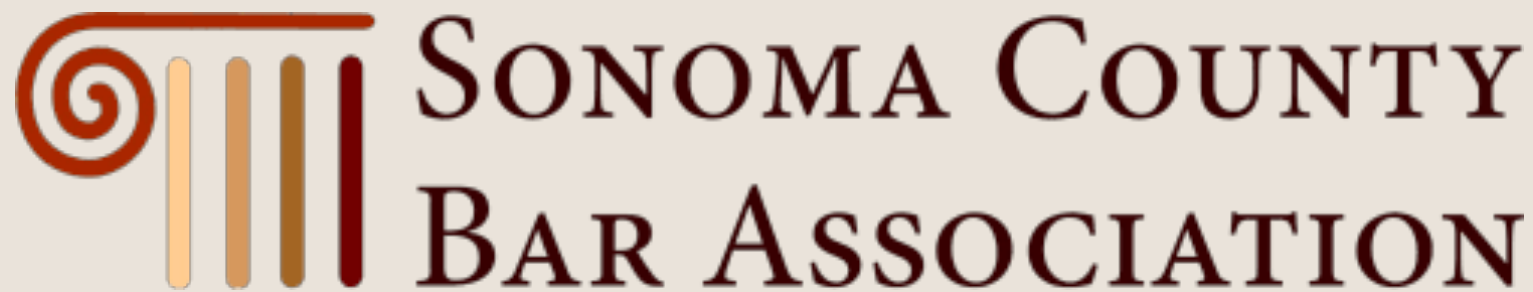
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Thank you for joining us!

April 25, 2024

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