

We are reaching out to remind our clients and colleagues of upcoming reporting deadlines under the Corporate Transparency Act (“CTA”). The CTA is now in effect and requires many U.S. entities to disclose their beneficial ownership to FinCEN (the Financial Enforcement Network, a bureau of the Treasury Department).

IPB generally is not filing Beneficial Ownership Information (BOI) Reports, but we of course are available to answer questions and, in some cases, can assist with filings. Below is a high-level summary of how to file BOI reports, as well as information about which entities are required to file reports and the application of the reporting requirements where trusts own or control a reporting entity.

1. Which entities must file BOI reports, and who is responsible for compliance?

The CTA requires “reporting companies” to file BOI reports. A reporting company includes (i) any entity created through a filing with the secretary of state or equivalent office, and (ii) any foreign entity registered to do business in the United States through such a filing. This will include most corporations, limited liability companies, and limited partnerships.

There are exemptions for entities regulated by the government in other ways, such as banks, public companies, and tax-exempt entities. There is also an exemption for qualifying “large operating” entities that employ more than 20 full-time employees in the United States, have more than \$5,000,000 in annual gross receipts or sales, and have a physical office in the United States. The exemptions generally will not apply to closely-held entities created for estate planning or asset management purposes.

Each reporting company will need to appoint a responsible person to coordinate and comply with the entity’s BOI reporting obligations. This might be an officer of a company, the general partner of a limited partnership, or the manager of an LLC.

2. Trusts and the CTA.

A typical trust created for estate planning purposes is not a reporting company and will not be required to file BOI reports, because such trusts generally are not created through a filing with any state or equivalent office. However, information about a trust’s ownership and management may need to be reported to FinCEN if the trust has a significant ownership interest in, or substantial control over, a reporting company (see section 7.C below).

3. January 1, 2025 deadline.

The initial reporting deadline for an entity formed before January 1, 2024, is January 13, 2025. Note that for entities formed after January 1, 2024, there is a 90-day reporting deadline if formed prior to January 1, 2025, and if formed after January 1, 2025, the deadline shortens to 30 days.

4. Penalties for failure to file.

Failure to file an initial report, failure to update beneficial ownership information, or providing false information about beneficial owners can result in fines up to \$500 per day and imprisonment for up to two years. There is limited information on the enforcement of CTA given its recent enactment, but it is essential for a reporting company to prioritize timely and accurate reporting to avoid these consequences.

5. How to file a report online.

Below are the steps to file an initial report for an entity in existence before 2024.

The initial report can be filed at <https://boiefiling.fincen.gov/boir/html>

- On line 1, select initial report.
- On line 3, check if you want the entity to receive a FinCEN ID. This may be useful in certain scenarios in which the entity owns other entities. Beneficial owners will need to apply for FinCEN IDs separately on the FinCEN website (see below).
- On lines 5-15, enter information about the entity. This information will include:
 - Full legal name of the entity;
 - Any DBA and trade names that the entity uses;
 - Jurisdiction (State) of formation;
 - Taxpayer ID for the entity;
 - The street address of the entity's principal place of business in the United States;
- On line 16, check the box if the entity was in existence before 1/1/2024.
 - If checking the box on line 16, click yes to skip the company applicant section on lines 18-33.
 - If the entity was not in existence before 1/1/2024, complete the company applicant section.
- On line 35, check the box if applicable.
- On line 36, enter the FinCEN IDs of all beneficial owners: see section 6 below for more information about FinCEN IDs and section 7 below regarding identification of beneficial owners.
- Provide your name and email address and submit the report.
- Save a copy of the confirmation to your files.

6. Beneficial owners should apply for FinCEN ID numbers.

Given that the report requires personal information from the beneficial owners, it is recommended that individual beneficial owners apply to FinCEN for FinCEN ID numbers. This is a very easy process that can be done online. Beneficial owners can then submit their FinCEN ID numbers to the company instead of reporting their personal information.

Another advantage of using a FinCEN ID number is that the company will not be required to file an updated report every time there is a change in the personal information of a beneficial owner. Rather, the beneficial owner will individually update his personal information with FinCEN.

Steps for Obtaining a FinCEN ID number:

- Go to <https://fincenid.fincen.gov/>
- Sign in using a Login.gov account or create an account from the FinCEN website.
- Fill in the fields with the requested information:
 - Full legal name;
 - Date of birth;
 - Current residential street address (does not need to be in the US);
 - Although the website gives an option of submitting a business address, since you are using your FinCEN ID as a beneficial owner, you must give your residential address (only company applicants can report a business address)
 - ID number from non-expired US passport, US driver's license, or state ID document;
 - You can use a foreign passport as an ID document only if you do not have any of the forms of ID listed above.
 - Photo of ID document.

7. Identifying beneficial owners.

The beneficial owners listed must be individuals. They cannot be other entities. The beneficial owners of a reporting company include anyone who has “substantial control” over the entity or who owns or controls 25% or more of the entity.

7.A. Beneficial owners with substantial Control.

A beneficial owner includes anyone who has substantial control over the entity.

Substantial control includes anyone who:

- Serves as a senior officer (e.g., president, CFO, CEO, COO, GC) or in a similar role;
- Anyone with authority over appointment or removal of officers or a majority of board directors;
- Anyone who directs or has substantial influence over important decisions made by the company;
- Any other form of substantial control.

7.B. Beneficial owners with $\geq 25\%$ ownership.

A beneficial owner includes anyone who owns or controls 25% or more of the entity (25% or more of the value or votes of the entity).

Ownership includes:

- equity interests;
- capital or profits interests;
- convertible debt; and
- options or warrants.

In calculating the percentage of ownership, all options are treated as having been exercised.

7.C. Indirect ownership and Trusts.

For reporting purposes, ownership can be direct or indirect through other entities, trusts, joint ownership, or other understandings and arrangements. For many of our clients, indirect ownership through a trust may be relevant. Because the beneficial owners of a reporting company for purposes of the CTA are always individuals, the trust itself will not be a beneficial owner. Rather, in cases in which a trust owns 25% or more of a reporting company, the reporting company must look through the trust and report the trust's owner(s).

Depending on the specifics of the trust arrangement, a trust may be deemed to have multiple "owners" under the CTA, each of whom must be reported as a beneficial owner to FinCEN.

These trust owners will generally include:

- The trustee of the trust;
- Any individual with the authority to dispose of trust assets (i.e., investment advisors and distribution advisors);
- A beneficiary who is the *sole* permissible recipient of trust income and principal;
- A beneficiary who has the right to demand a distribution or withdraw substantially all of the trust assets; and/or
- A grantor or settlor of the trust who has the right to revoke the trust or otherwise withdraw trust assets.

In determining whether an individual should be reported as a beneficial owner, note that the individual's outright ownership and ownership via one or more trusts or other entities should be aggregated.

8. Requirements to file updated reports.

A reporting company must file an updated report with FinCEN within 30 days of any change in the information submitted in their initial report. This will include any change of name or DBA

name, address, beneficial owners, or jurisdiction. Entities will also need to file updated reports with FinCEN within 30 days of any change to their beneficial owners' personal information, but this requirement can be avoided if the entities use the beneficial owner's FinCEN ID number when filing the initial report.

Individuals who applied for a FinCEN number must report to FinCEN any change in the information submitted (i.e. change of address or updated ID number on ID document) within 30 days of the change.

Individuals who do not use the FinCEN number method will be required to report this information to each entity for which they are beneficial owners, and then each such entity is required to file an updated report.