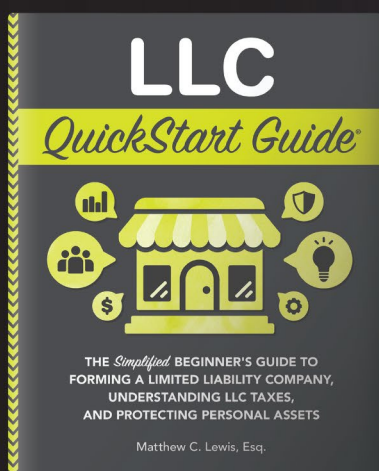


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# Corporate Transparency Act (CTA) Guide

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# **CORPORATE TRANSPARENCY ACT BENEFICIAL OWNERSHIP INFORMATION (BOI) SUBMISSION GUIDE**

JANUARY 2024

Dear Reader,

First, on behalf of myself and the wonderful folks at ClydeBank Media, thank you for taking the time to purchase our book, the *LLC QuickStart Guide*. The entire team behind this book passionately feels that everyone who dreams of starting their own business has the intelligence, drive, and passion to do so—with the right educational materials to work with. We are honored and delighted to be with you along the way.

In **Chapter 3**, I briefly discuss the federal Corporate Transparency Act which went into effect on **January 1, 2024**. Because the application and process for submitting the information required under the Act was not available at the time of writing, this Guide is provided as a Digital Asset. Please review it carefully to ensure you are not subject to fines and other penalties.

If you are reading this document before performing all of the necessary steps to set up your business entity, I admire your diligence. Feel free to review the contents of this Guide but this is the *last step* in the process. All of the information required by the U.S. Department of Treasury will be generated after you have formed your LLC with the appropriate state agency and obtained an Employer Identification Number (EIN) as discussed throughout the book. After you have performed those two actions, please circle back around and follow the steps outlined herein.

If you have already set up your LLC and obtained an EIN, you are in the home stretch! Part I of this Guide briefly discusses the creation of the Corporate Transparency Act. Part II explains your requirements under the Act, both initially and ongoing. The Appendix contains a reproduction of the form provided by the U.S. Department of Treasury at the time of this Guide's writing.

Please note that while I am an attorney and the author of *LLC QuickStart Guide*, the book associated with this Digital Asset, this is not legal advice. I do not know your personal situation and cannot comprehensively cover every possible scenario within a small Guide like this one. My goal is to provide accurate educational material so that you can assess and meet your legal responsibilities under the Corporate Transparency Act.

## **PART I: WHAT IS THE CORPORATE TRANSPARENCY ACT?**

The world is filled with bad actors who traffic controlled substances that kill people, smuggle human beings across our nation's borders, and engage in other forms of illegal conduct. As discussed throughout *LLC QuickStart Guide*, state governments create and regulate business entities created under state law like your LLC. Federal law enforcement agencies such as the Drug Enforcement Agency (DEA) and Federal Bureau of Investigation (FBI) repeatedly encountered problems in investigating business entities used for criminal enterprises because state law often limited the information available to law enforcement without a court order. The time spent investigating who owned an LLC or corporation involved in illegal activities created delays in their investigations and regularly resulted in the bad actors evading law enforcement.

The solution enacted by Congress was the **Anti-Money Laundering Act of 2021** which included the **Corporate Transparency Act** (“CTA” or the “Act”). The CTA is a federal law that requires most business entities formed through state governments—most commonly, corporations and LLCs—to provide the federal government with information about the identity of their owners beginning on January 1, 2024 in order to combat money laundering and other illegal activity. The goal is for the federal government to possess a database of almost every business entity and its owners within the United States for law enforcement agencies to use in their investigations. I say “almost” because there are exceptions within the Act, but most small businesses will not fall within one.

If you are interested, you can read the Act itself if you copy & paste the following text into your preferred search engine: 31 U.S.C. § 5336. My goal with this Guide is to translate that dense statutory text into normal everyday language so you can meet your legal duty under the CTA and get back to running your business.

## **PART II: WHAT DOES THE ACT REQUIRE YOU TO DO?**

### **REPORTING COMPANIES**

First, the Act only applies to **reporting companies** which are businesses “created [or registered] by the filing of a document with a secretary of state or a similar office under the law of a State or Indian Tribe” that are not otherwise exempt under the Act. Sole proprietorships and general partnerships discussed in **Chapter 2** are not required to file anything under the Act. The reasoning is that those companies operate through the individual owners rather than through a separate legal entity. As discussed throughout *LLC QuickStart Guide*, operating a business through a sole proprietorship or general partnership entails significant personal liability risk which is the entire reason for forming an LLC.

Most of the exemptions under the Act apply to industries already heavily regulated by the federal government such as banks, insurance providers, and companies that sell securities (stocks, bonds, and so forth). Some are excluded because of potential constitutional issues such as political parties and religious organizations. Because large companies are not usually involved in money laundering and other bad acts, the CTA exempts companies that have over twenty (20) employees, over \$5,000,000 in gross receipts annually, and have a physical presence within the United States.

As the owner of a new LLC, you are not likely to meet any of the exemptions. The U.S. Department of Treasury estimates that over thirty-four million (34,000,000) businesses will be required to registered under the Act. Unless you are absolutely sure you fall within an exempt category, you should assume you are required to comply with the CTA.

### **BENEFICIAL OWNERS**

Second, the CTA requires every business to provide **Beneficial Ownership Information (BOI)** to the U.S. Department of Treasury – Financial Crimes Enforcement Network (FinCEN). This information is demographic data such as name, address, Social Security/Individual Taxpayer Identification Number (ITIN), birthdate, and so forth. The Act also requires each beneficial owner to provide an **acceptable identification document** which

is an unexpired driver's license or identification document provided by a state government, an unexpired U.S. Passport, or an unexpired foreign passport *if* the individual does not have any of the first three documents.

A **beneficial owner** is “an individual who, directly or indirectly, through any contract, arrangement, understanding, relationship, or otherwise (i) exercises substantial control over the [LLC]; or (ii) owns or controls not less than 25 percent [25%] of the ownership interests” and who is not otherwise exempt. In essence, you must provide information about anyone who owns more than 25% of the company OR who is considered one of the people in charge of the company. The Act does not define the phrase “substantial control” and caselaw will likely expand the definition over the coming years. If you are not sure whether someone meets that definition, the safest approach would be to assume that they do.

As mentioned above, there are exemptions to who is considered a beneficial owner, but they likely do not apply to a small business owner. Children cannot be beneficial owners because they lack capacity to make decisions. People acting on behalf of others such as a trustee of a trust or an employee are not beneficial owners because they by definition do not own the company. Also, individuals who may have rights to the company's assets but cannot exert control—such as creditors and individuals who will inherit the company one day through probate—are exempt. Again, you should assume you and anyone who owns over twenty-five percent (25%) of your LLC or makes important business decisions is a beneficial owner.

**PRACTICE NOTE:** If you were married when you formed your LLC AND own more than fifty percent of the company (50%) *and* you lived in Arizona, California, Idaho, Louisiana, Nevada, New Mexico, Texas, Washington, or Wisconsin at the time you formed your LLC, you probably should include your wife as a beneficial owner.

These states are known as **community property** states. In a community property state, a person's spouse has an undivided one-half (1/2) interest in any property acquired after a marriage is formed until it is dissolved. If you own fifty percent or more of the company, your spouse's interest would meet the beneficial owner threshold. The Department of Treasury may clarify this issue in the coming months, but the safest option is to include your spouse as a beneficial owner.

## REPORTING BENEFICIAL OWNERSHIP INFORMATION

As of January 1, 2024, FinCEN is accepting **Beneficial Ownership Information Reports (BOIRs)**. The website for submitting those reports is located here: [boiefiling.fincen.gov](https://boiefiling.fincen.gov). Please note that this link may change in the future. If it does not work at the time you are reading this guide, my suggestion is to input the following phrase into your preferred search engine: Submit Beneficial Ownership Information FinCEN.

As this Guide's writing, FinCEN offers only two options for submitting your BOIR: 1) downloading a text file (PDF) to fill out yourself and submit through their website, and 2) filling out a web-based form directly through the FinCEN website. In the future, I expect other methods to be added such as by mailing in a completed paper application and potentially a mobile application through the Google Play Store and Apple App Store. This Guide will be limited to only the two options available now.

In submitting my own BOIR for my law firm's business entity (a Professional LLC discussed in **Chapter 3**), it took me approximately **10 minutes**. Times will vary based on whether you have all of the necessary information on-hand before beginning. My suggestion is to do the following actions before beginning the application: 1) scan an acceptable identification document for each beneficial owner, 2) locate your Employer Identification Number, and 3) verify the correct information for your business and each beneficial owner such as addresses, birthdates, and SSNs/ITINs.

## **TIME LIMITS FOR SUBMITTING BOIRS**

Because the CTA is a new law that sudden affects tens of millions of businesses, the time required under the Act varies based on when an LLC is formed.

- Business entities formed **before January 1, 2024** must submit their BOIR before December 31, 2024.
- Business entities formed **between January 1, 2024 and December 31, 2024** have ninety (90) days to submit their BOIR.
- Business entities formed **on or after January 1, 2025** have thirty (30) days to submit their BOIR.

## **PENALTIES FOR NONCOMPLIANCE**

Because the CTA was enacted to combat serious criminal activities, the penalties for noncompliance can be severe. There are both civil and criminal penalties for anyone who willfully does not submit their beneficial ownership information to FinCEN or anyone who falsifies the information they do submit. Notably, the potential penalties are the same for both groups.

First, the potential civil penalties are "not more than \$500 for each day that the violation continues or has not been remedied." Five hundred dollars for every single day can easily bankrupt a newly created business. Also, please note that the penalties are levied against the individual who does not submit their beneficial ownership information or falsifies information submitted to FinCEN. Your LLC's liability protection will not bar the U.S. federal government from seizing your personal assets, levying your individual bank accounts, or placing liens on property owns by you as opposed to the LLC.

Second, the potential criminal penalties are fines of not more than \$10,000 and up to two years in federal prison. This is a severe penalty for failing to submit a report that may take you as little as ten minutes to complete. It will certainly catch several thousand people off-guard in the coming months. Thankfully, you purchased *LLC QuickStart Guide* and will not be among them.

Finally, I anticipate state governments to pass their own laws imposing penalties in connection with the CTA. For example, a state government may pass a law imposing civil and criminal penalties if a beneficial owner submits information to the state secretary of state or equivalent that does not match the information in the BOIR on file with FinCEN for the same LLC. The best thing you can do is to make sure any information provided to a state or federal agency regarding your LLC is accurate to the best of your knowledge.

## ONGOING DUTIES UNDER THE ACT

I placed this section after discussion of the penalties so you understand how important it is to be in compliance with the CTA. If any of the beneficial ownership information changes—including *residential and business addresses*—it must be updated **within one year** of the change. Failing to update your BOIR could result in the civil and criminal penalties discussed earlier.

My suggestion to you (and my business clients) is to set up a process in which an LLC's Members report any changes to their personal information **every three months (quarterly)**. Most of the potential changes will be residential addresses but not always. If your business expands and you create a new LLC for a subsidiary, it will require a new BOIR. If your business relocates to a new address, the BOIR will need to be updated. It is imperative that business owners regularly update the information on file with FinCEN and the state agency responsible for forming their LLC to ensure ongoing compliance moving forward.

## CONCLUSION

I cannot emphasize enough how truly unique the Corporate Transparency Act is. It is very rare that a federal law is enacted that touches almost every single business operating within the United States. In the coming years, it will be interesting to see how this new law impacts the beating heart of our nation — small businesses like the one you created by yourself with the help of *LLC QuickStart Guide*. No matter how many times I do it, I am both honored and humbled when I help people pursue their dreams of independence and financial freedom through the creation of new businesses. Thank you for letting ClydeBank Media and I join you for the start of your journey.

## APPENDIX: SAMPLE BENEFICIAL OWNER INFORMATION REPORT (BOIR)

The images on the following pages are from the PDF BOIR currently available on the FinCEN website for reporting your beneficial information report. They are included here so that you can review its requirements and gather the required information before beginning.

**WARNING:** A printed version of the BOI reporting form is not for submission and will not be processed.

There are three things I would like to point out. First, as you can see from Question 1, this is the same form used to initially file your BOIR and to make updates. Second, if you hover over each question in the actual PDF, a text block will explain each space to assist in providing the correct information. Finally, FinCEN assigns each applicant a "FinCEN ID Number" after the first report is filed. You will not have one for your initial report.

The most up-to-date PDF can be found here: <https://boiefiling.fincen.gov/fileboir>.

# Beneficial Ownership Information Report

Home

Reporting Company

Company Applicant(s)

Beneficial Owner(s)



## Beneficial Ownership Information Report

Version Number: 1.0

OMB No. 1506-0076

Release Date: 02-02-2024

### Report Preparation & Submission Instructions:

- |                      |   |
|----------------------|---|
| <b>Instructions</b>  | 1. Complete the report in its entirety with all required information. Click <b>Instructions</b> for help.                                 |
| <b>Validate</b>      | 2. Click <b>Validate</b> to ensure all entered data is properly formatted and that all required fields are completed.                     |
| <b>Finalize</b>      | 3. Click <b>Finalize</b> to lock the entries in the report and prepare it for submission. Click <b>Edit Report</b> to unlock and re-edit. |
| <b>Save</b>          | 4. Click <b>Save</b> to retain a local copy of the report (this can be done at any time during report preparation).                       |
| <b>Print</b>         | 5. (Optional) Click <b>Print</b> to print a hard copy of your completed report.   |
| <b>Ready To File</b> | 6. Select <b>Ready to File</b> (activated after the report is finalized and saved locally) to begin the submission process.               |

### Filing Information

1. \*Type of filing:

- a. Initial report
- b. Correct prior report
- c. Update prior report
- d. Newly exempt entity

Reporting Company information associated with most recent report, if any:

- e. Legal name
  - f. Tax Identification type
  - g. Tax Identification number
  - h. Country/Jurisdiction (if foreign tax ID only)
2. Date prepared (auto-filled when form is finalized)

#### PRIVACY ACT AND PAPERWORK REDUCTION ACT NOTICE

This notice is given under the Privacy Act of 1974 (Privacy Act) and the Paperwork Reduction Act of 1995 (Paperwork Reduction Act). The Privacy Act and Paperwork Reduction Act require that FinCEN inform persons of the following when requesting and collecting information in connection with this collection of information. This collection of information is authorized under 31 U.S.C. 5336 and 31 C.F.R. 1010.380. The principal purpose of this collection of information is to generate a database of information that is highly useful in facilitating national security, intelligence, and law enforcement activities, as well as compliance with anti-money laundering, countering the financing of terrorism, and customer due diligence requirements under applicable law. Pursuant to 31 U.S.C. 5336 and 31 C.F.R. 1010.380, reporting companies and certain other persons must provide specified information. The provision of that information is mandatory and failure to provide that information may result in criminal and civil penalties. The provision of information for the purpose of requesting a FinCEN Identifier is voluntary; however, failure to provide such information may result in the denial of such a request. Generally, the information within this collection of information may be shared as a "routine use" with other government agencies and financial institutions that meet certain criteria under applicable law. The complete list of routine uses of the information is set forth in the relevant Privacy Act system of record notice available at <https://www.federalregister.gov/documents/2023/09/13/2023-19814/privacy-act-of-1974-system-of-records>. According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is 1506-0076. It expires on November 30, 2026. The estimated average burden associated with this collection of information from reporting companies is 90 to 650 minutes per respondent for reporting companies with simple or complex beneficial ownership structures, respectively. The estimated average burden associated with reporting companies updating information previously provided is 40 to 170 minutes per respondent for reporting companies with simple or complex beneficial ownership structures, respectively. The estimated average burden associated with this collection of information from individuals applying for FinCEN identifiers is 20 minutes per applicant. The estimated average burden associated with individuals who have obtained FinCEN identifiers updating information previously provided is 10 minutes per individual. Comments regarding the accuracy of this burden estimate, and suggestions for reducing the burden should be directed to the Financial Crimes Enforcement Network, P. O. Box 39, Vienna, VA 22183, Attn: Policy Division.



# 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 information is provided instead)

### 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

Add Attachment

Remove Attachment