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INTERNATIONAL FRANCHISE ASSOCIATION

Beneficial Ownership Reporting Is Here: What You Need to Know About the New Requirements

January 17th, 2024

Speakers



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Franchise Advocacy

Agenda

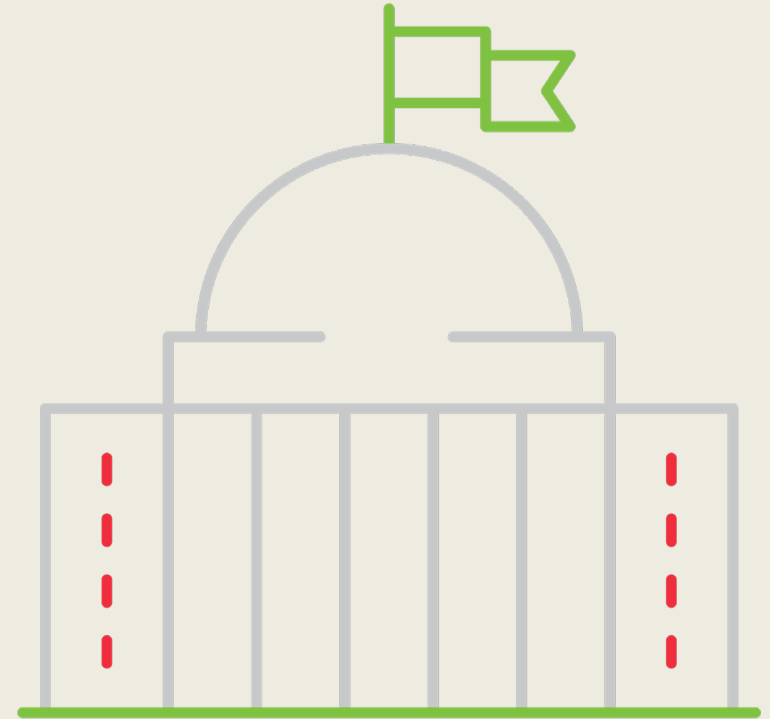
1. Background: Corporate Transparency Act
2. Who Needs to Report?
3. Reporting Requirements
4. Reporting Deadlines
5. Additional Reporting Considerations



Background: Corporate Transparency Act

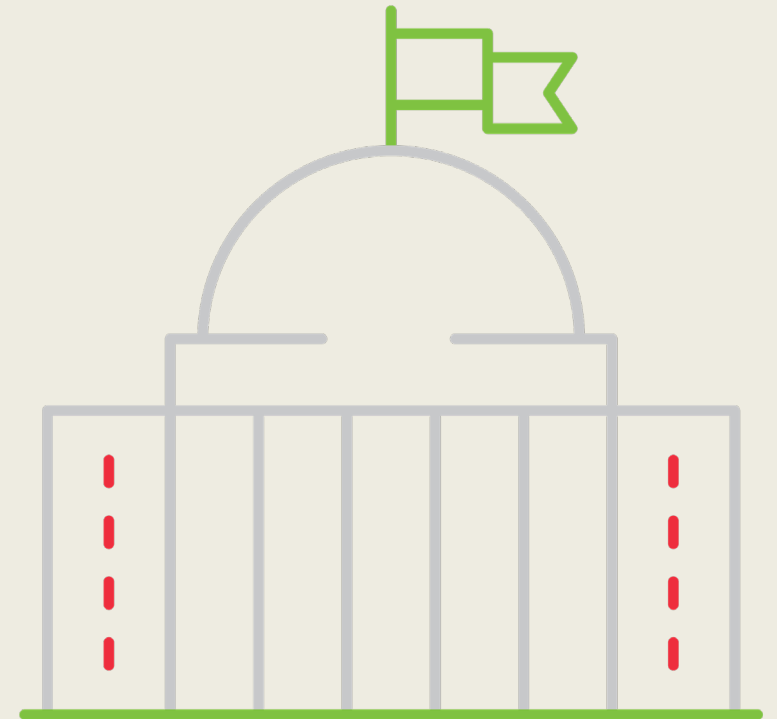
What is the Corporate Transparency Act?

Enacted in 2021, the CTA aims to combat illicit activity like tax fraud, money laundering, and financing for terrorism by increasing visibility to ownership of specific US businesses operating in or accessing the U.S. market.



Corporate Transparency Act (CTA)

- Effective January 1, 2024
- Part of the Anti-Money Laundering Act of 2020
- CTA establishes uniform Beneficial Ownership Information Reporting Requirements for certain business entities
- A Beneficial Ownership Information report must be filed with the Financial Crimes Enforcement Network (FinCEN)
 - Private database — Beneficial Ownership Secure System (BOSS)
 - Limited access





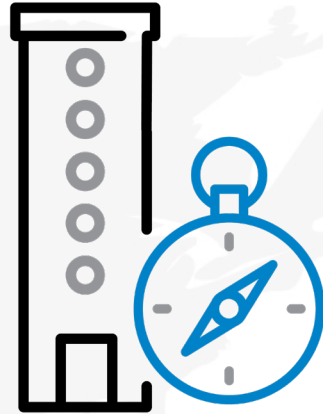
Who Needs
to Report?

Who Files a BOI Report?



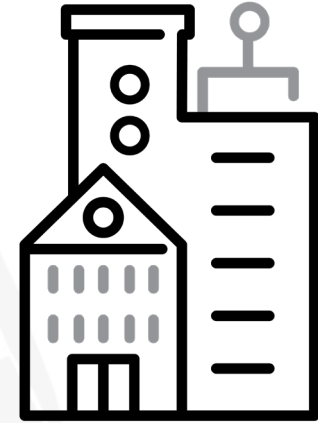
Domestic reporting companies

- Corporation, LLC, or other entity created by filing a document with a SOS (or similar office)



Foreign reporting companies

- Corporation, LLC, or other entity created under foreign law and registered in US by filing a document with a SOS (or similar office)



“Other entities”?

- LLP, LLLPs, STs, BTs, most LPs – FinCEN expects so
- SPs, GPs, trusts – FinCEN expects not

There are 23 Exemptions

1. Securities Exchange Act issuer
2. Governmental authority
3. Bank
4. Credit union
5. Depository institution holding company
6. Money services business registered with FinCEN
7. Broker/Dealer in securities
8. Securities exchange or clearing agency
9. Other Exchange Act registered entity
10. Investment company or investment adviser registered with the SEC
11. Venture capital fund adviser
12. Insurance company
13. State-licensed insurance producer
14. Commodity Exchange Act registered entity
15. Public 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

Exemption: “Large Operating Company”

- Any entity that:
 - A. Employs **20+ full time employees in the U.S.**, and
 - B. Filed a Federal income tax or information return in the U.S. for the previous year demonstrating **over \$5 million in gross receipts or sales**
 - For an entity that is part of an affiliated group of corporations that filed a consolidated return, the applicable amount is the amount on the consolidated return for such group; and
 - C. Has an **operating presence** at a physical office in the U.S.



FinCEN Guidelines on “Large Operating Company”

Employee Headcount (20+)

Full time employee – based on general business tax principles (IRS definition)

Affiliate entities may not consolidate employee headcount

Time factor – FinCEN will consider additional guidance or FAQ

Gross receipts or sales (\$5 million+)

May not include revenue from non-U.S. sources

Based on activity occurring in the U.S. + revenue on U.S. income tax returns

M&A may impact revenue & payroll – must determine if exemption applies

Operating presence at a physical office within the U.S.

Means that an entity regularly conducts its business at a physical location in the U.S. that the entity owns/leases and that is **distinct from the place of business of any other unaffiliated entity.**



Reporting Requirements

Initial Report

*Report to be filed with FinCEN
in the form and manner
prescribed by FinCEN*

An initial report will include:

*Filer must certify that the
report or application is true,
correct, and complete*

**INFORMATION ON THE
REPORTING COMPANY**

**INFORMATION ON EVERY
BENEFICIAL OWNER**

**INFORMATION ON EVERY
COMPANY APPLICANT**

Information on Reporting Companies

CFR 1010.380(b)(1)(i)

- A. The **full name of the reporting company** (legal name used to establish the entity)
- B. Any **trade name or “DBA”**
- C. A **complete current address consisting of:**
 - A. In the case of a reporting company with a principal place of business in the US, the street address of such principal place of business; and
 - B. In all other cases, the street address of primary location in the US
- D. The **state or Tribal jurisdiction of formation**
- E. For foreign reporting company – the state or Tribal jurisdiction where such company first registers
- F. **IRS Tax ID number (and EIN);** If a foreign reporting company has not been issued a TIN, a **tax ID number issued by a foreign jurisdiction and the name of the jurisdiction**

Information on Beneficial Owners

31 CFR 1010.380(b)(1)(ii) [annotated]

For every individual who is a beneficial owner of a reporting company:

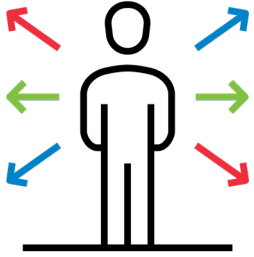
- A. The **full legal name** of the individual
- B. The **date of birth** of the individual
- C. A **complete current address** of the individual's residence
- D. A **unique identifying number and the issuing jurisdiction** from:
 - 1) A non-expired passport issued to the individual by the U.S. government;
 - 2) A non-expired identification document issued to the individual by a State, local government, or Indian tribe;
 - 3) A non-expired driver's license issued to the individual by a State; or
 - 4) A non-expired passport issued by a foreign government to the individual if the individual does not possess any of the above documents
- E. An **image of the document** from Subsection (D)

Who is a Beneficial Owner?

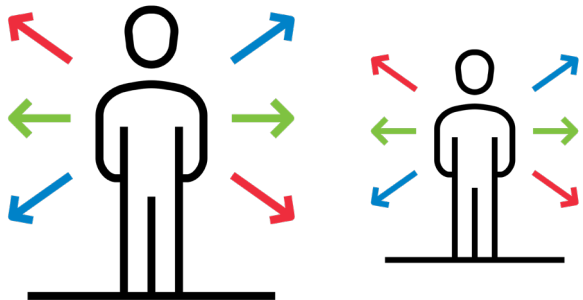
31 CFR 1010.380(d): Beneficial owner... means any **individual** who, directly or indirectly, either:

- **Exercises substantial control** over such reporting company **OR**
- **Owns or controls at least 25%** of the ownership interest of such reporting company





Beneficial Owner(s): Substantial Control



31 CFR 1010.380(d)(1)(i):

(1) Substantial control—

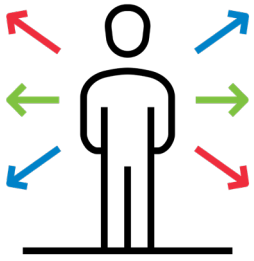
(i) Definition of substantial control. An individual **exercises substantial control** over a reporting company if the individual:

(A) Serves as a **senior officer** of the reporting company;

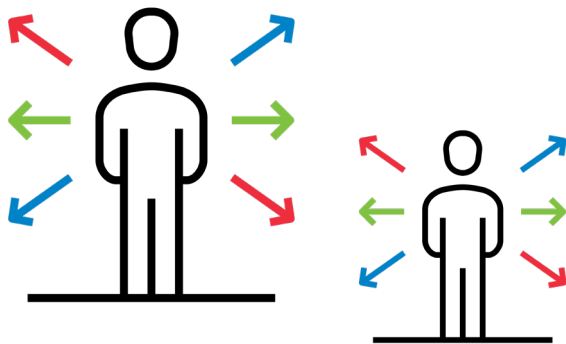
(B) Has authority over the appointment or removal of any senior officer or a majority of the board of directors (or similar body);

(C) Directs, determines, or has substantial influence over important decisions made by the reporting company; or

(D) Has any other form of substantial control over the reporting company.



Beneficial Owner(s): Substantial Control

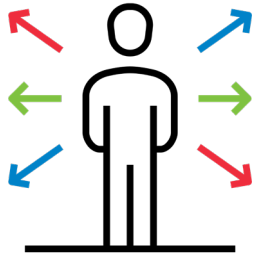


Substantial control— (continued)

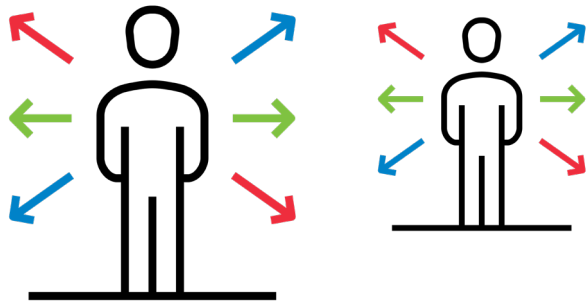
31 CFR 1010.380(d)(1)(i)(C):

(C) Directs, determines, or has substantial influence over important decisions made by the reporting company:

- (1) The nature, scope, and attributes of the business of the reporting company, including the sale, lease, mortgage or other transfer of any principal assets of the reporting company;
- (2) The reorganization, dissolution, or merger of the reporting company;
- (3) Major expenditures or investments, issuances of any equity, incurrence of any significant debt, or approval of the operating budget of the reporting company;
- (4) The selection or termination of business lines or ventures, or geographic focus, of the reporting company;
- (5) Compensation schemes and incentive programs for senior officers;
- (6) The entry into or termination, or the fulfillment or non-fulfillment, of significant contracts;
- (7) 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



Beneficial Owner(s): Substantial Control



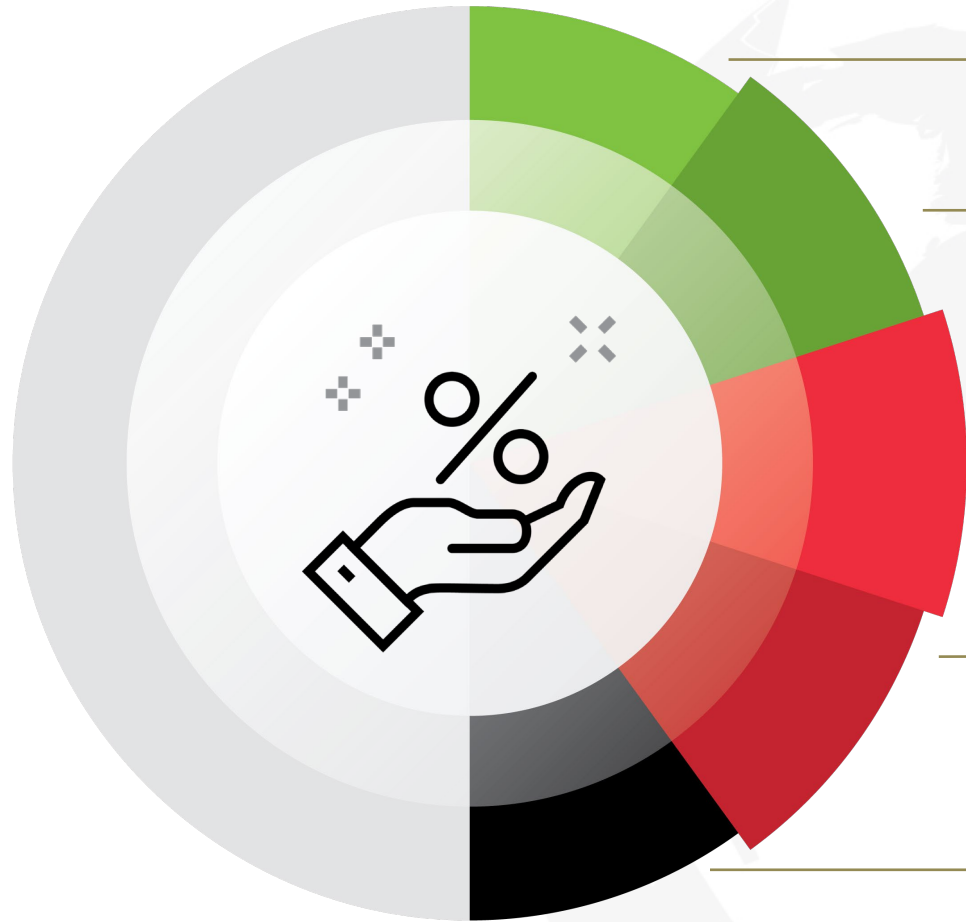
Substantial control— (continued)

31 CFR 1010.380(d)(1)(ii):

(ii) Direct or indirect exercise of substantial control. An individual may **directly or indirectly**, including as a trustee of a trust or similar arrangement, exercise substantial control over a reporting company through:

- (A) **Board** representation;
- (B) Ownership or control of a majority of the **voting power** or voting rights of the reporting company;
- (C) **Rights** associated with any financing arrangement or interest in a company;
- (D) **Control** over one or more **intermediary** entities that separately or collectively exercise substantial control over a reporting company;
- (E) Arrangements or financial or business relationships, whether formal or informal, with other individuals or entities acting as **nominees**; or
- (F) **any other contract, arrangement, understanding, relationship, or otherwise.**

Beneficial Owner: Ownership Interests



Equity, stock, similar instrument

Capital or profits interest

Convertible instruments

Puts, calls, options

Any other instrument, *contract*, arrangement, understanding, relationship, mechanism establishing ownership

What are the 5 Exceptions to Beneficial Owner Reporting?

Minor children (report parent/guardian's info)

Nominees, intermediaries, custodians, agents

Future inheritors

Employees (not senior officers)

Creditors



Who is a Company Applicant?

Reporting applies to companies created on or after January 1, 2024

Up to two “**company applicants**” must be identified for reporting companies:

- (1) the individual who directly files the document to create or register the reporting company, and
- (2) the individual who is primarily responsible for directing or controlling such filing (if more than one individual participates in the filing).

For example, Individual A, who wants to create a company, prepares the necessary formation documents and directs Individual B to file the documents with the relevant state office. Individuals A and B are both company applicants—Individual B directly filed the documents, and Individual A was primarily responsible for directing or controlling the filing.



What is the FinCEN Identifier?

- Number specific to beneficial owner or company applicant
- Application filed with FinCEN by beneficial owner or company applicant
- Application contains PII and document image
- BOI report may set forth FinCEN ID
- Reporting company that files initial report can obtain FinCEN ID
- Information must be updated or corrected with FinCEN within 30 days



Reporting Deadlines

When is the Initial Report Due?

Created Before January 1, 2024

File on/before January 1, 2025

Created on or after January 1, 2024

File within 90 calendar days or
earlier of:

Date received actual notice of
creation or registration

Date SOS first provides public notice
of creation or registration

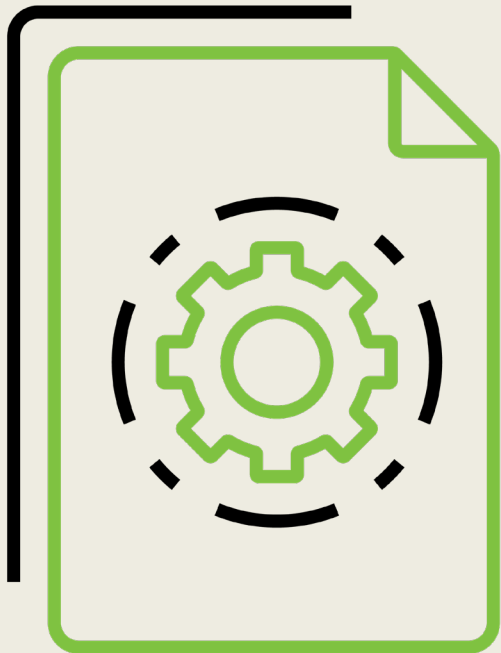
Created on/after January 1, 2025

File within 30 calendar days

Once exempt but no longer

File within 30 calendar days after no
longer meeting exemption criteria

When do you Need to Update or Correct a BOI Report?



Updates

- File **within 30 calendar days** after the following change occurs
 - Change in information for reporting company or a beneficial owner
 - If reporting company qualifies for exemption after filing initial report
- Company applicant information may not have to be updated

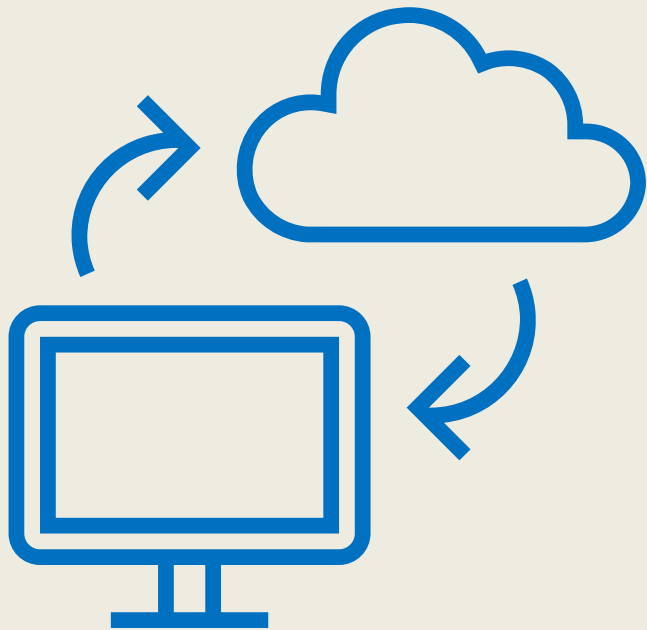
Corrections

- If report contained inaccurate information at the time of filing on company, BO, or company applicant
- File **within 30 calendar** days after company becomes aware of or has reason to know of inaccuracy



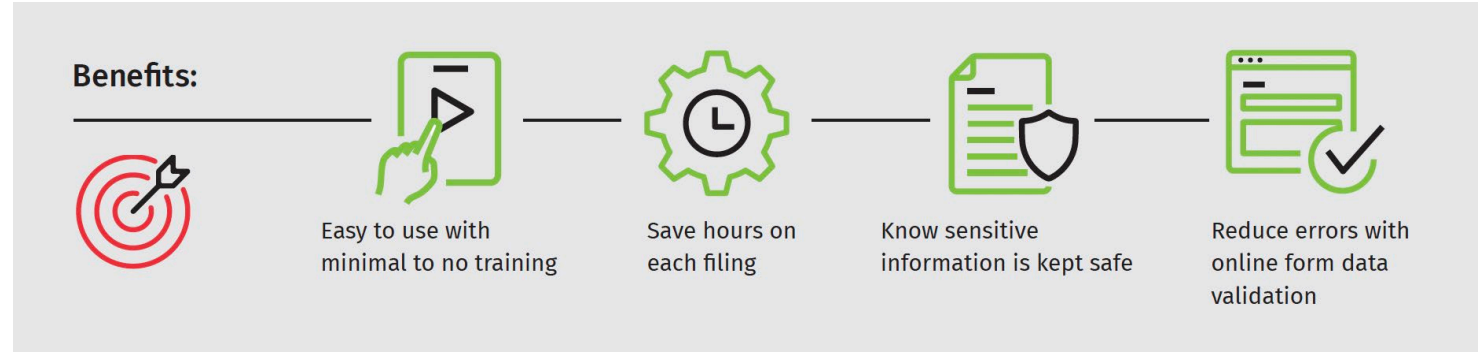
Additional Reporting Considerations

How to Submit a BOI Report?



- FinCEN has developed the **Beneficial Ownership Secure System (BOSS)** to receive, store, and maintain BOI
- “in a secure, nonpublic database, using information security methods and techniques that are appropriate to protect non-classified information security systems at the highest security level. . . .”
- BOSS is cloud-based and will meet the highest Federal Information Security Management ACT (FISMA) level – FISMA High

BOIs Can Also be Filed Through a Third-Party, like CT Corporation



Step-by-step guidance



Smart rules update the form based on input

Beneficial Ownership

Beneficial Ownership Dashboard > Create New BOI Report

Beneficial Ownership Filing Process

Tasks 20%

- Identify Reporting Company
- Add Company Applicant
- Add Beneficial Owner(s)
- Review Summary
- Submit for Filing

Start from an existing entity?

If you have already created an entity in the Beneficial Ownership Filing dashboard, you can select it here to pre-populate the fields to speed up your filing process!

Select Entity

Choose an option

Submit

Reporting Company Information ⓘ

Fields may already be filed if you are creating a filing from a pre-existing entity or corporation.

Company Details

Full Legal Name: 123 Financial Entity Type: LLC

Country/Jurisdiction of Formation: United States of America US State/Jurisdiction of Formation: Texas

Filing Type: Initial

Was this entity created before January 2024? No

Date of Formation: 01/04/2024

Additional Information

Trade name or DBA name: 123 Financial Services

Tax identification type: EIN Tax identification number: 290317120

Current US Address

Limited Access - Who Has Access to BOSS

1. U.S. Federal Agencies
2. US State, local, and Tribal government agencies
3. Foreign law enforcement agencies
4. Financial institutions
5. Federal functional regulators
6. The U.S. Department of the Treasury

See: <https://www.fincen.gov/nprm-fact-sheet>



Certification Requirement

- Each person filing a report or application under the CTA must certify that the report or application is **true, correct, and complete**
- Applies to BOI reports and applications for a FinCEN ID
- Although individuals are providing information to the reporting company, the reporting companies certify the accuracy and completeness of their own reports

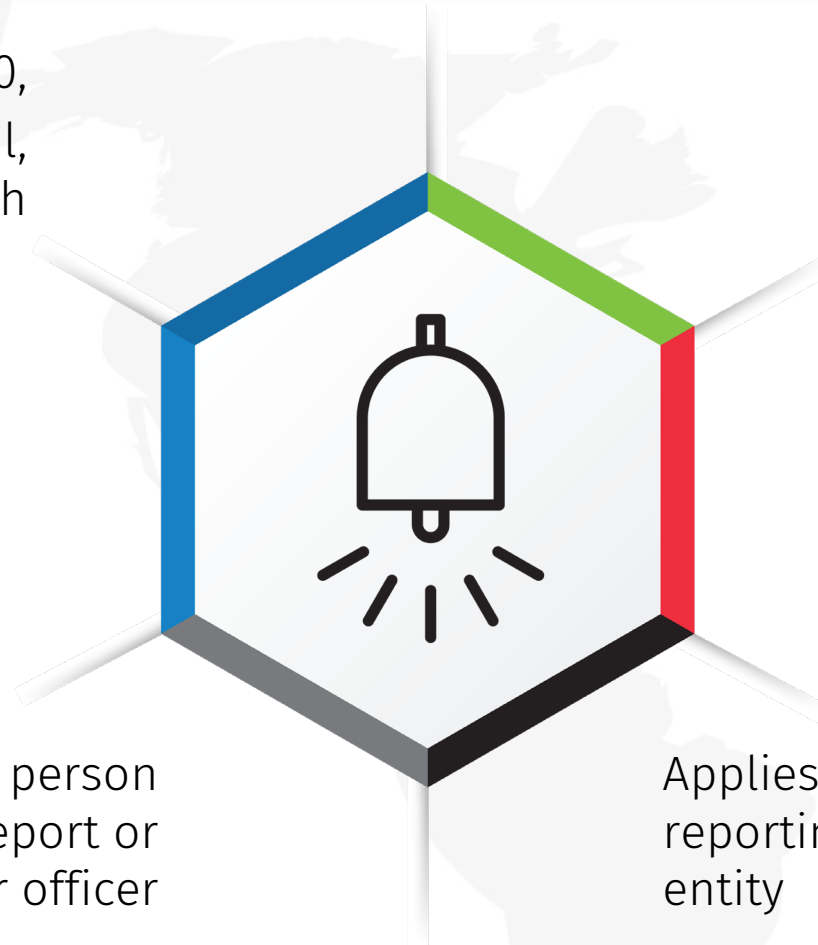
“FinCEN does not expect that an inadvertent mistake by a reporting company acting in good faith after diligent inquiry would constitute a willfully false or fraudulent violation.”

What are the Penalties?

Fine of not more \$10,000,
not more than 2 years in jail,
or both

Civil penalty, not
more \$500 per day

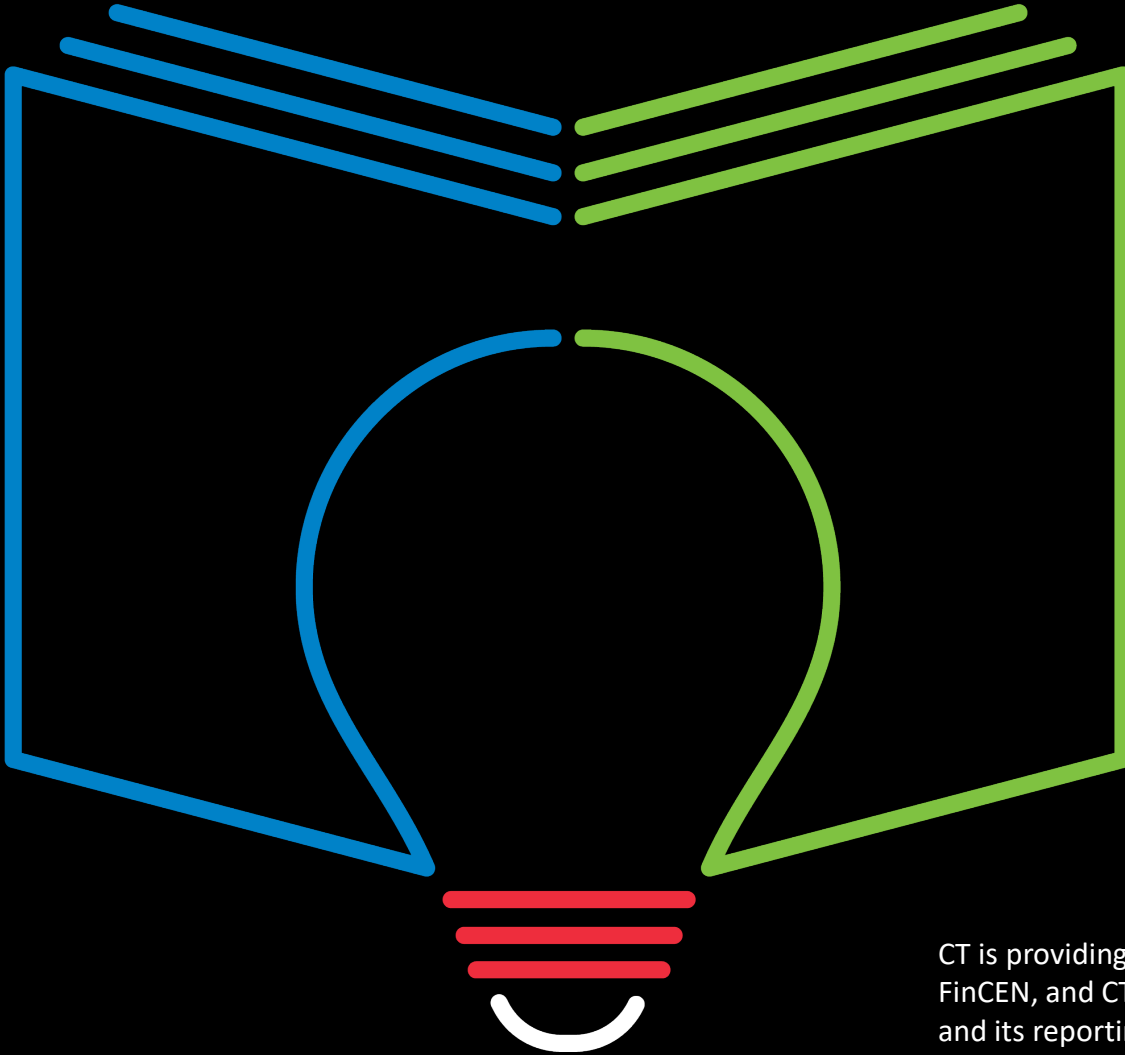
Possible liability for person
causing failure to report or
senior officer



Unlawful to willfully
provide or attempt to
provide
false/fraudulent BOI

Unlawful to willfully fail
to report complete or
updated BOI

Applies to individual,
reporting company, other
entity



Thank you for
attending!

For questions, please contact:

Beverly Odom

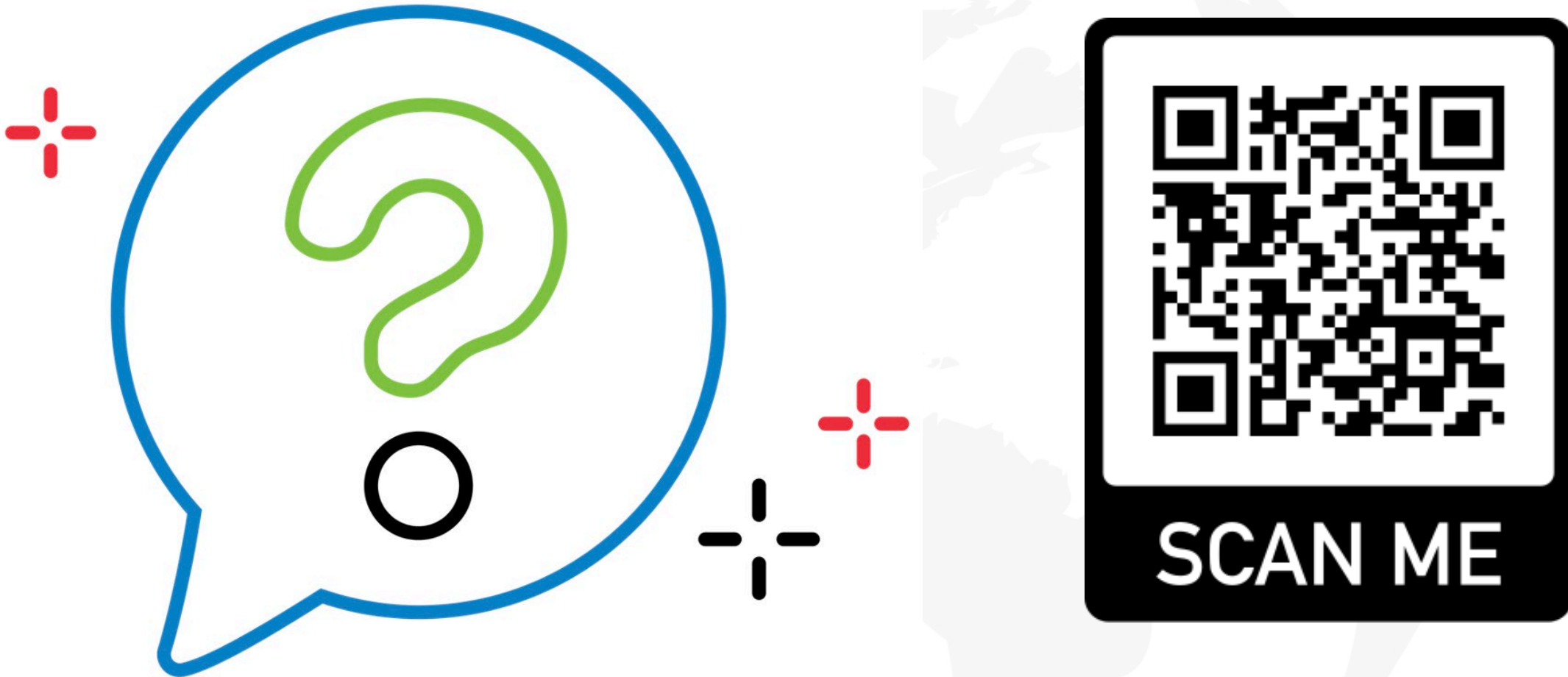
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