



KLEINBARD LLC

## The Corporate Transparency Act: Are You Prepared to Disclose Your Beneficial Owners?

**The Corporate Transparency Act (CTA)** legislation aims to prevent money laundering and other illicit activities by requiring certain corporations, LLCs, and similar entities to disclose their beneficial owners to the Financial Crimes Enforcement Network (FinCEN) of the Department of Treasury. Under this act, these entities must provide FinCEN the personal information of their beneficial owners including their names, birthdates, addresses, and identification cards/passports. This information helps law enforcement and national security agencies track financial activities and combat financial crimes. But, who qualifies as a beneficial owner? In this alert we will discuss beneficial ownership, exceptions, and the process for submitting a Beneficial Ownership Information Report (BOI Report).

### But First...Are you considered a “Reporting Company”?

In our prior [alert](#), we focused on whether your business meets the definition of “Reporting Company” that is subject to the requirements of the CTA. If a company qualifies under any of the exceptions listed in the [Small Entity Compliance Guide](#), it does not have to file its beneficial ownership information. You can also check out our handy [pocket chart](#) to help determine if you are considered a Reporting Company.

As a reminder, the most common exemption is for a “Large Operating Company”. **To be considered, a Large Operating Company, a company must:**

- 1 Employ more than 20 full-time employees in the U.S. and
- 2 Have an operating presence at a physical office within the U.S. and
- 3 File a tax return for the prior year for more than \$5,000,000 of gross receipt or sales.

### A FEW IMPORTANT NOTES:

Companies cannot aggregate employees across entities to qualify for this exemption. For example, if a company does not directly employ anyone but has three subsidiaries that each employ seven people it cannot aggregate the twenty-one employees to qualify for the exemption. The employees must be full-time to count toward the exemption. Part-time employees and independent contractors do not count. The physical office cannot be a P.O. Box.

## What Determines “Beneficial Ownership”?

A beneficial owner is any individual who directly or indirectly (i) exercises substantial control over a reporting company or (ii) owns or controls at least 25% of the ownership interests (including equity, stock, voting rights, profits interests, convertible instruments, warrants, options, or any other instrument used to establish ownership) of a reporting company.

It is important to note that lack of an ownership interest in a company does not necessarily mean that an individual is off the hook as a beneficial owner. The rules are drafted broadly so that any individual who exercises “substantial control” directly or indirectly is considered a beneficial owner.

## So, What is Substantial Control?

An individual exercises substantial control over a reporting company if the individual meets any of four general criteria:

- 1 Senior Officer:** the individual is a senior officer of the company (President, Chief Financial Officer, General Counsel, Chief Executive Officer, Chief Operating Officer, or any other officer who performs a similar function as these officers);
- 2 Appointment or Removal Authority:** the individual has authority to appoint or remove senior officers or a majority of the board of directors of the company;
- 3 Important Decision Maker:** the individual is an important decision-maker (any individual who directs, determines, or has substantial influence over important decisions including – scope of the business, termination or selection of lines of business, entry into or termination of significant contracts, major expenditures or investments, issuance of equity or debt, approval of operating budget, compensation schemes, reorganization, merger, or amendments of any substantial governance documents); or
- 4 Catch-All:** the individual has any other form of substantial control over the reporting company.

There is no limit to the number of individuals who can be reported for exercising substantial control.

## What are the Beneficial Owner Exceptions?

- 1 Minor children** (provided that a parent/guardian's information is reported).
- 2 Nominees, Intermediaries, Custodians and Agents Reporting Companies** (beneficial owners must be real parties in interest who exercise control indirectly – but not those who merely act on another individual's behalf).
- 3 Employee Individuals** (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, *and* they are not a senior officer of the company).
- 4 Inheritance** (future or contingent interests do not cause an individual to be a Beneficial Owner)
- 5 Creditors** (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 interest the individual has in the reporting company)

## What are the Next Steps to Submit this Information?

Companies may now submit a Beneficial Ownership Information Report (BOI Report) to FinCEN through their database ([linked here](#)). Please contact your attorney for assistance in submitting your BOI Report.

Companies formed prior to January 1, 2024, that are Reporting Companies have until January 1, 2025 to submit their BOI Report. Reporting Companies that were formed on or after January 1, 2024 will have 90 calendar days after receiving notice of the company's creation or registration to submit its BOI Report. Reporting Companies created on or after January 1, 2025, will have 30 calendar days after receiving notice of the company's creation or registration to file their initial BOI Reports with FinCEN.

The implementation and enforcement of the CTA is an evolving process and we will continue to keep you informed on all updates as they become available. Please reach out to your Kleinbard attorney if you have any questions or want to discuss strategies on how to approach the requirements of the CTA.