

LAW OFFICE OF EUGENE R. CURRY

Barnstable House
3010 Main Street, Route 6A
Barnstable, Massachusetts 02630

Phone: (508) 375-0070
Fax: (508) 437-0459
E-mail: ercurry@eugencurry.com

Friends,

As you may be aware, the Corporate Transparency Act (“CTA”) went into effect on January 1st. The CTA requires many small businesses including corporations and limited liability companies (“Reporting Companies”) to report beneficial ownership information (a “BOI Report”) to the Financial Crimes Enforcement Network (“FinCEN”) of the Department of Treasury. The BOI reports are not difficult to file. However, the process of determining what to report and assembling the necessary information can be time consuming. Therefore, I recommend that you not wait until the last minute to prepare a report if your business is a reporting company.

The FinCEN has published guidance for small businesses available at: https://www.fincen.gov/sites/default/files/shared/BOI_Small_Compliance_Guide.v1.1-FINAL.pdf (“BOI Guidance”). I have summarized some of the most important points in the BOI Guidance below.

Who is required to report?

Most small corporations and limited liability companies that were created by filing a document with a Secretary of State (or similar office) will be considered Reporting Companies. By this definition, sole proprietorships are not considered reporting companies. There are a total of 23 exemptions listed and described at pages 4 to 14 of the BOI Guidance. There are also special reporting exemptions described at page 39 of the BOI Guidance.

There is an exemption for non-profit organizations that have been determined by the IRS to be tax-exempt. However, nonprofit organizations that have not been determined by the IRS to be tax-exempt will need to file a BOI Report. I have recently become aware that some tax-exempt organizations are receiving solicitations stating that they are required to file a BOI Report and offering to file the Report for a fee. This is a scam.

There is also an exemption for inactive entities. In order to be considered an inactive entity, an organization must meet all of the following requirements: (1) the entity was in existence on or before January 1, 2020; (2) the entity is not engaged in active business; (3) the entity is not owned by a foreign person; (4) the entity has not experienced a change in ownership in the preceding six month period; (4) the entity has not sent or received funds in excess of \$1,000 in the preceding 12 month period; and the entity does not hold any assets.

Who are beneficial owners?

Reporting Companies are required to provide information about their beneficial owners. A beneficial owner is any individual who owns or controls at least 25 percent of the ownership interests of a reporting company or who exercises substantial control over a corporation. If there

are multiple owners with at least 25 percent of the ownership in Reporting Companies, each of them must be included in the BOI Report.

An ownership interest can be stock in a corporation or a membership interest in an LLC as well as other forms of ownership interests.

An individual exercises substantial control over a Report Company if the individual meets any of these general criteria:

The individual is a senior officer.

1. The individual has authority to appoint or remove certain officers or a majority of the directors of a Reporting Company.
2. The individual is an important decision-maker.
3. The individual has any other form of substantial control over the Reporting Company.

Charts and other information providing details about beneficial owners is available at pages 16 to 28 of the BOI Guidance. There are exemptions to ownership interests for minor children, nominees, intermediaries, custodians or agents, employees, and inheritors. These are described in more detail at pages 29 to 31 of the BOI Guidance.

What information is included in the BOI Report?

For most Reporting Companies, the Reporting Company will need to provide its:

1. Full legal name.
2. Any trade name or dba name.
3. Complete current street address.
4. Its IRS taxpayer identification number or employer identification number.

In addition, for each Beneficial Owner and, if applicable, Company Applicant, the Reporting Company will need to provide:

1. Full legal name.
2. Date of Birth.
3. Complete current street address.
4. A unique identifying number and image from a current State driver's license or other approved governmentally issued ID documents.

There is a required information checklist that provides more details about the information to be provided at page 38 of the BOI Guidance.

As an alternative to providing the information, an individual can provide this same personal information directly to FinCEN, by applying for a FinCEN Identifier number. If a Beneficial Owner has a FinCEN ID, the Reporting Company can provide the identifier number in lieu of collecting and reporting the required personal data. FinCen Identifiers are described at page 40 of the BOI Guidance.

In addition to reporting beneficial owners, Reporting Companies created on or after January 1, 2024, are required to report its company applicants. Company applicants are individuals who directly filed the document that created a Reporting Company or an individual who directed or controlled the filing process. For example, if I filed the Articles of Organization for a corporation this year or in the future, I would be considered a company applicant. Company applicants are described in more detail at pages 32 to 36 of the BOI Guidance.

When do I need to file?

The deadline for filing depends on the date that the Reporting Company was formed:

- **Reporting Companies created or registered to do business before January 1, 2024, will have until January 1, 2025, to file.**
- Reporting Companies created or registered on or after January 1, 2024, and before January 1, 2025, will have 90 calendar days after receiving actual or public notice of registration.
- Reporting Companies created or registered after January 1, 2025, will have 30 days from actual or public notice of registration to file.

How do I file?

Reports will be filed via the FinCEN's secure portal. Instructions for filing a BOI Report are available at: [Beneficial Ownership Information Reporting | FinCEN.gov](https://www.fincen.gov/beneficial-ownership-information-reporting).

Changes to BOI Report

Reporting Companies are required to report **any** change about the company and its beneficial owners and correct inaccuracies in their BOI Reports. There is no requirement to report the termination or dissolution of a Reporting Company. These requirements are described at Pages 43 to 47 of the BOI Guidance.

What happens if I don't file?

There are severe penalties for willful noncompliance with the CTA, including penalties of up to \$10,000.00 and up to 2 years in prison. The penalties for willful failure to file are described at page 15 of the BOI Guidance.

Conclusion

I hope that you will find this summary helpful. This summary will not apply to every business and therefore should not be considered legal advice. I recommend that you review the BOI Guidance or contact me if you have any questions regarding compliance with the CTA.

Gene Curry

Law Office of Eugene R. Curry
3010 Main Street
Barnstable, Massachusetts 02630
(508) 375-0070
(508) 437-0459 (fax)
Profile available on [LinkedIn.com](#)