

THE CORPORATE TRANSPARENCY ACT

PART 4 — BENEFICIAL OWNERS AND COMPANY APPLICANTS DEFINED UNDER THE CTA

On January 1, 2021, Congress enacted the Corporate Transparency Act (the "CTA") as part of the Anti-Money Laundering Act of 2020 and its annual National Defense Authorization Act. The new legislation requires certain entities to report information about their owners, management and the individuals who helped create the entities to the U.S. Department of the Treasury's Financial Crimes Enforcement Network ("FinCEN"). The information reported to FinCEN is intended to assist law enforcement in combating money laundering, tax fraud, terrorist financing, and other unlawful activities that occur through shell and front companies.

This is the fourth article in a new series about the CTA. This edition highlights which individuals qualify as "beneficial owners" and "company applicants" of reporting companies and further explains the unique identifier that such individuals can apply for through FinCEN. For more detail on what specific information is required to be reported for beneficial owners and company applicants, please read our other articles in this series: [The Corporate Transparency Act \(Parts 1-4\)](#).

Who is a Beneficial Owner?

A beneficial owner is any individual who, directly or indirectly, either (a) exercises substantial control over or (b) owns or controls at least 25% of the ownership interests of a reporting company.

- An individual exercises substantial control over a reporting company if the individual:
 - Serves as a senior officer of the reporting company;
 - Has authority over the appointment or removal of any senior officer or a majority of the board of directors;
 - Directs, determines, or has substantial influence over important decisions made by the reporting company; or
 - Has any other form of substantial control over the reporting company.
- Ownership interests include any certificate, convertible interest, equity, future, option, profit interest, share, stock, warrant, or other mechanism used to establish ownership.

Who is not a Beneficial Owner?

- A minor child is not considered a beneficial owner if the reporting company reports information for a parent or legal guardian instead.
- An individual whose only interest in a reporting company is a future interest through a right of inheritance is not a beneficial owner.
- An individual acting as a nominee, intermediary, custodian, or agent on behalf of another individual is not a beneficial owner.
- An employee of a reporting company who is not a senior officer and whose substantial control over, or economic benefit from, the reporting company is derived solely from their employment status is not a beneficial owner.
- Certain creditors of a reporting company are not considered beneficial owners.

Who is a Company Applicant?

A company applicant is any individual who (a) directly files the document that creates, or registers, the reporting company with a secretary of state or any similar office or (b) is primarily responsible for directing or controlling the filing of the document.

What is a FinCEN ID?

Any individual or entity can obtain a FinCEN identifier (a "FinCEN ID") by providing FinCEN the same information that reporting companies are required to report regarding the individual or entity.

- An individual or entity can then provide their FinCEN ID to reporting companies, and the reporting companies can report the individual's FinCEN ID in place of listing the required information.
- An individual or entity may find it useful to apply for a FinCEN ID if they (a) prefer to provide their personal information directly to FinCEN rather than to reporting companies or (b) are likely to be identified as a beneficial owner or company applicant of multiple reporting companies.

Corporate Transparency Act(Part 4): Beneficial Owners and Company Applicants Defined Under the CTA

Continued

When does a FinCEN ID have to be updated or corrected?

- Any individual or entity that obtains a FinCEN ID is responsible for updating and correcting any changes to the previously reported information used to obtain the FinCEN ID.
- For FinCEN ID updates, an individual or entity must update its application within 30 calendar days after a change in the previously reported information.
- For FinCEN ID corrections, an individual or entity must correct its application within (a) 30 calendar days from becoming aware or having reason to know of any inaccuracy in the previously reported information and (b) 90 days from the submission of the inaccurate application.
- Any failure to properly update or correct a FinCEN ID may result in civil and criminal penalties. For more details on the violations and penalties for failing to comply with the CTA, please check out our other articles in this series: [The Corporate Transparency Act \(Part 3\)](#).

FinCEN is currently in the process of creating the specific reporting system and additional regulations surrounding the CTA. Therefore, the information discussed in this article is subject to change. For more information on the Corporate Transparency Act and to further understand the extent of your company's reporting obligations, please read our other articles in this series: [The Corporate Transparency Act \(Parts 1-4\)](#). Or contact your Winstead relationship attorney or any of the following Winstead attorneys:

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