# The Corporate Transparency Act of 2021

The Corporate Transparence Act of 2021 is part of the FinCEN initiative.  Its purpose is to determine the beneficial owners of businesses.  The law was a long time in coming and has had the support of the National Small Business Network group.  In 2016, the Fact Coalition invited a group of business and accounting leaders to Washington, including Thala Rolnick CPA from NSBN to encourage Congress to pass this legislation.

Most people don't realize that the United States is one of the largest tax havens in the world.  Law enforcement organizations from across the world would follow drug trafficking money, sex slavery money, terrorist money from country to country.  Then the money would land someplace called Delaware or Nevada or Wyoming or South Dakota or Alaska and the trail would run cold.

The irony is that the US has been requiring other countries to disclose the beneficial owners of accounts in their counties. The United States is now finally getting around to setting up a database to disclose the same information to them.

To understand the law, one must understand who it effects.  The law provides the following definitions.

<u>Reporting Company/Entity </u>–

- A domestic reporting company is a corporation, limited liability company or other similar entity created by the filing of a document pursuant to the laws of a US state or Indian Tribe.
    - It is intended to include limited partnerships, limited liability partnerships, limited liability limited partnerships and business statutory trusts.
    - It does not include general partnerships and donative trusts although donative trusts can be captured as beneficial owners.
- A foreign reporting company is a corporation, limited liability company or other similar entity that is:
    - Formed under the laws of a foreign country and
    - Registered to do business in the U.S. pursuant to a filing with a U.S. state or Indian Tribe.

<u>Beneficial Owner</u> – Is an individual who, directly or indirectly, through any contract, arrangement, understanding, relationship or otherwise:

- Exercises substantial control over the entity or
- Owns or controls at least 25% of the ownership interest of the entity.

It does not include:

- A minor child if, the child's information is reported by a parent or guardian.

- And individuals acting as a nominee, intermediary, custodian or agent on behalf of another individual.
- An individual acting solely as an employee of the entity and whose control over or economic benefits from such entity is derived wholly from the employment status of the person.
- An individual whose only interest in the entity is through a right of inheritance or
- A creditor of the entity, unless the creditor exercises substantial control over the entity or owns or controls at least 25% of the ownership interest of the entity.

Substantial Control – The proposed regulations list three indicators of substantial control:

- Service as a senior officer of a reporting company,
- Authority over the appointment or removal of any senior officer or dominant majority of the board of directors (or similar body) of a reporting company,
- Direction, determination or decision of or substantial influence over, important matters of a reporting company.
- It also includes a catch-all for any other form of substantial control over the reporting company.

Ownership interest –

- Includes both equity in the reporting company and other types of interests such as:
    - Capital or profit interests (including partnership interests),
    - Convertible instruments,
    - Warrants or rights,
    - Options or privileges to acquire equity, capital or other interests.
- Debt instruments are included if they enable the holder to exercise the same rights as one of the specified equity or other interests, including the ability to convert the instrument into one of the specified equity or other interests.

25% Ownership –

- Includes all ownership interests of any class or type,
- The percentage is determined by aggregating all ownership interests,
- Direct or indirect ownership including, but not limited to:
    - Joint ownership of an undivided interest,
    - Through control of ownership owned by another individual and
    - With regard to a trust or similar arrangement, that holds such ownership interest.

Who does not need to comply with these reporting requirements –

There are 23 types of entities that are excluded. In all cases, they are types of entities that either already report owners or are not the type of entities that are likely to be laundering or hiding money. They are:

- Issuers of securities registered under Section 12 of the Securities Exchange Act of 1934.
- Entities established under the laws of the United States, a state or political subdivision of a state or under an interstate compact between two or more states and that exercises governmental authority on behalf of the United States or any such state or political subdivision.
- Entities registered with the Commodity Futures Trading Commission under the Commodity Exchange Act.
- Public accounting firms registered under the Sarbanes Oxley Act of 2002.
- Public utilities that provide telecommunication services, electrical power, natural gas or water and sewer services within the United States.
- Pooled investment vehicles that are operated or advised by certain entities described in other clauses above.
- Tax-exempt Section 501(c) corporations, political organizations, charitable trusts or split-interest trusts exempt from tax.
- Certain corporations, limited liability companies, or other similar entities that operate exclusively to provide financial assistance to or hold governance rights over tax exempt Section 501(c) corporations, political organizations, charitable trusts or split-interest trusts exempt from taxation.
- Banks and bank or savings and loan holding companies.
- Federal or state credit unions.
- Registered money transmitting businesses.
- Brokers or dealers registered under Section 15 of the Exchange Act.
- Exchange or clearing agencies registered under Section 6 or Section 17A of the Exchange Act.
- Other entities registered with the Securities and Exchange Commission (the “SEC”) under the Exchange Act.
- Investment companies or investment advisers registered with the SEC and investment advisers that have made certain required filings with SEC.
- Insurance companies defined in the Investment company Act of 1940.
- Insurance producers that are authorized by a state or subject to supervision by the insurance commissioner or a similar official or agency of a state and has an operating presence at a physical office within the United States.
- Any entity that:
    - Employs more than 20 employees on a full-time basis in the United States,
    - Filed United States income tax returns in the previous year reporting more than $5 million in gross receipts or sales and

    - Has an operation presence at a physical office within the United States [physical office for this purpose means an office that is owned or leased by the entity and is not a residence or shared space (other than office space shared with affiliates)]. NOTE: no newly formed entity will be able to satisfy the requirements for this exemption.
- A corporation, limited liability company, or other similar entity of which the ownership interests are owned or controlled, directly or indirectly, by one or more exempt entities ("exempt Subsidiaries").
- Any entity that:
    - Has been in existence for over one year,
    - That is not engaged in an active business,
    - That is not owned directly or indirectly by a foreign person,
    - That has not, in the past 12 months period, experienced a change in ownership or received more than $1000 and
    - Does not otherwise hold assets of any type ("dormant entity" exemption).
- Pooled investment vehicles formed under the laws of a foreign country that must file a written certification with FinCEN that provides the identification information of an individual who exercises substantial control over the pooled investment vehicle.
- An exempt subsidiary that no longer meets the criteria necessary to qualify as an exempt subsidiary must submit beneficial ownership information to FinCEN.
- An exempt dormant entity that no longer meets the criteria necessary to qualify as an exempt dormant entity must submit beneficial ownership information to FinCEN.

Initial Reports –

- For any domestic reporting company that was in existence before January 1, 2024 or company that became a foreign reporting company before January 1, 2024 will have to report by January 1, 2025.
- For domestic companies created on or after January 1, 2024, they must report within 30 days of when the entity was deemed created.
- For entities that become foreign reporting companies on or after January 1, 2024, they also have 30 days to report once they received registration acceptance notification.
- Any entity that no longer meets one of the exemptions listed above must also register within 30 days of determination.

Required Initial Information -

For the reporting company:

- The full legal name of the reporting company,
- Any trade name or "doing business as,"
- Completer current address including:

- The principal place of business within the United States including the street address.
- If the business does not have a principal place of business in the United States, the street address of the primary location in the United States where the company conducts business.

- The state, tribal or foreign jurisdiction where the entity was formed.
- For a foreign reporting company, the state or Tribal jurisdiction where the company was formed.
- The IRS taxpayer number (TIN) including an EIN of the reporting company. If the company is a foreign reporting entity that does not have an EIN, they must report the tax identification number issued by their foreign jurisdiction along with the name of the jurisdiction.

For every individual beneficial owner of a reporting company and every individual who is a company applicant with the reporting company:

- The full legal name of the individual,
- The date of birth,
- Complete address:
  - If it is a company applicant, the street of the business.
  - If it is an individual, the residential street address.
- A unique identification number and the issuing jurisdiction of one of the following:
  - Non-expired passport issued by the United States,
  - Non-expired identification document issued by a state, local government or Indian tribe.
  - Non-expired driver's license issued by a state or
  - Non-expired passport issued by a foreign government if the person does not have one of the above.

An image of the document with the identification number used must also be submitted.

Changes to the initial filings must be reported within 30 days of the change. There is a safe harbor if a person acted in good faith to correct inaccurate information. They have 90 days to make the corrections.

<u>Penalties</u> –

- Civil monetary penalties of $500 a day while the violation continues or has not been remedied and
- Criminal penalties of not more than $10,000, imprisonment of not more than 2 years or both.

<u>Who has access to this information</u> –

The information will be housed in a national, nonpublic database named the Beneficial Ownership Secure System (BOSS). It will be used by national intelligence and law enforcement agencies and federal functional regulators.

An access rule will explain how authorized parties must handle and safeguard the information in the database. It will also provide a high-level description of how BOSS will operate.

Prepared for the NSBN by Thala Taperman Rolnick CPA