

# The Corporate Transparency Act

## Compliance Nightmare?

Craig S. Cody , CPA



# AGENDA

- ✔ Why You Should Care about the CTA
- ✔ Overview of the CTA & BOI Reporting
- ✔ Deadlines and Penalties

# POLL

How aware are you of the **Corporate Transparency Act (CTA)**, **Beneficial Ownership Information (BOI) Reporting**, and **Financial Crimes Enforcement Network (FinCEN)**?

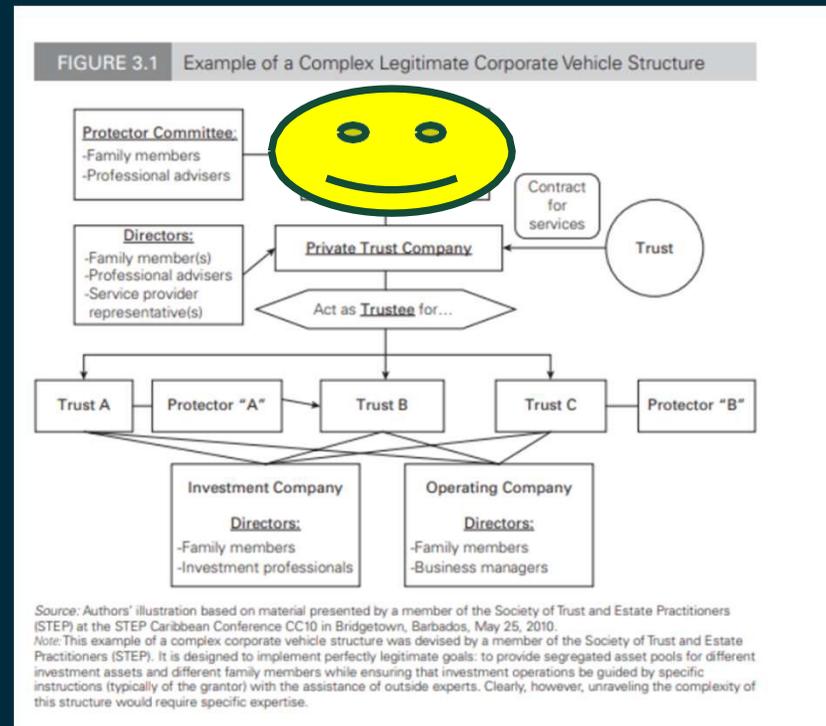


# FUN WITH WORDS & PICTURES!

## *Breaking Down:* Beneficial Ownership

## Information Reporting

**Beneficial...** “conferring benefit; relating to rights, other than legal title”  
**Ownership...** “state or fact of exclusive rights and control over property”



# ENFORCEMENT:

FinCEN (Financial Crimes Enforcement Network)



# WHY YOU SHOULD CARE...

- ✔ Virtually all small and medium sized businesses must file a “Beneficial Ownership Information Report” (BOI Report) in 2024
- ✔ Jan 1, 2024 “effective date”
- ✔ Analysis and data collection can be complex and time-intensive
- ✔ Penalties are steep! \$500/day; \$10k maximum

# CTA + BOI OVERVIEW

Three most important questions...

- ✔ Is a company a Reporting Company?
- ✔ If yes, which individual(s) are reportable Beneficial Owner(s)?
- ✔ If applicable, who are the reportable Company Applicant(s)? (applicable to entities formed after January 1, 2024)

# CTA + BOI OVERVIEW

## What is a Reporting Company?

### ✔ Domestic reporting companies

✔ A corporation,

✔ A limited liability company (LLC), or

✔ Any other company created by the filing of a document with the secretary of state or similar office (including tribal orgs)

#### Examples:

- Delaware Limited Liability Company
- California For-Profit Corporation
- Florida Homeowner's Association
- Texas General Partnership

# CTA + BOI OVERVIEW

## What is a Reporting Company?

- ✔ Foreign reporting companies
  - ✔ An company formed under the laws of a foreign country; and
  - ✔ Registered to do business in any U.S. state or tribal jurisdiction.

### Examples:

- Colombian LTDA registered to do business in Florida
- Cayman Island LP registered to do busienss in Delaware
- Swiss Cooperative registered to do business in New York

# CTA + BOI OVERVIEW

Which companies are **exempt**?

- ✔ 23 total exemptions
- ✔ Six most-notable exemption types:
  - ✔ Companies in highly-regulated environments
  - ✔ Certain registered or “large” investment companies
  - ✔ Tax-exempt entities and their assistanting entities

# CTA + BOI OVERVIEW

Which companies are **exempt**?

- ✔ Six most-notable exemptions types, continued:
  - ✔ Large operating companies:
    1. 20+ full-time employees
    2. Physical presence in U.S.; **AND**
    3. More than \$5M in gross receipts/sales
  - ✔ Subsidiaries of certain exempt entities
  - ✔ Inactive entities

# CTA + BOI OVERVIEW

## Which individuals are Beneficial Owners?

- ✔ An individual is a Beneficial Owner if they:
  - ✔ Directly or indirectly exercise “substantial control”; OR
  - ✔ Directly or indirectly own or control 25% of ownership interests

### Examples:

- Husband & wife owners of a marketing agency operated through an LLC
- COO of a 10-employee marketing company operated through a corporation
- The spouse of an owner of an LLC or Corporation in a community property state
- Owner of an LLC that holds real estate

# Substantial Control



## SENIOR OFFICER

any individual holding the position or exercising the authority of a:

1. President
2. Chief financial officer (CFO)
3. General counsel (GC)
4. Chief executive officer (CEO)
5. Chief operating officer (COO)

or any other officer, regardless of official title, who performs a similar function as these officers



## APPOINTMENT OR REMOVAL AUTHORITY

any individual with the ability to appoint or remove any **SENIOR OFFICER** or a majority of the board of directors or similar body



## IMPORTANT DECISION-MAKER

any individual who directs, determines, or has substantial influence over important decisions made by the reporting company, including decisions regarding the reporting company's:

1. **Business**, such as:
  - Nature, scope, and attributes of the business
  - The selection or termination of business lines or ventures, or geographic focus
  - The entry into or termination, or the fulfillment or non-fulfillment, of significant contracts
2. **Finances**, such as:
  - Sale, lease, mortgage, or other transfer of any principal assets
  - Major expenditures or investments, issuances of any equity, incurrence of any significant debt, or approval of the operating budget
  - Compensation schemes and incentive programs for senior officers
3. **Structure**, such as:
  - Reorganization, dissolution, or merger
  - 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



## CATCH-ALL

any other form of substantial control over the reporting company. Control exercised in new and unique ways can still be substantial. For example, flexible corporate structures may have different indicators of control than the indicators included here

# CTA + BOI OVERVIEW

## Who is a **Company Applicant**?

- ✔ Up to two individuals; one who:
  - ✔ **Directly files** the creation/registration document
  - ✔ Primarily responsible for **controlling** the relevant document
- ✔ Only companies formed on/after Jan. 1, 2024 must report

# INFORMATION TO BE REPORTED

What needs to be reported, and how?

- ✔ Information on the Reporting Company:
  - ✔ Legal name and DBA/trade name
  - ✔ Current physical address
  - ✔ Jurisdiction of formation
  - ✔ Federal Taxpayer ID number (or foreign TIN)

# INFORMATION TO BE REPORTED

## What needs to be reported, and how?

- ✔ Information\* on **Beneficial Owners & Company Applicants:**
  - ✔ Individual's name, DOB, and address
  - ✔ Identifying number and issuing jurisdiction of U.S. passport\*\*, DL, or state/local/tribal ID
  - ✔ Copy of identifying document

\*Alternatively, individuals and entities may apply for and obtain a FinCEN identifier, which can be included on subsequent filings in lieu of this information.

\*\*Foreign passport allowable if none of the other types of documents exist

# HOW TO FILE

## What needs to be reported, and how?

- ✔ BOI Reports can be submitted using:
  - ✔ Secure filing system via [FinCEN.gov](https://www.fincen.gov) (available January 1, 2024)
  - ✔ Industry-leading tax filing software
  - ✔ Paper filing MAY be available, if electronic filing is not possible

# DEADLINES

- ✔ Reporting begins: Jan. 1, 2024
- ✔ Entities formed before Jan. 1, 2024:  
Jan. 1, 2025
- ✔ Entities formed after Jan. 1, 2024:  
Within 30 days\*

\*Subject to change to 90 days, per FinCEN's proposed regulations



# DEADLINES

- ✔ Change of Information (“COI”) Filings:  
Within 30 Days of “Change”
- ✔ Previously Exempt Reporting Companies:  
Within 30 Days of “Non-Exempt Date”

# PENALTIES

- ✔ Civil penalties:  
\$500 / day, up to \$10,000 (per entity)
- ✔ Criminal penalties\*:  
Up to two years imprisonment

\*Individuals may also be subject to civil or criminal penalties for willfully causing a company not to file a required BOI report or by providing incomplete or false information.





# Questions & Answers