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THE BARNES WALKER EDUCATIONAL SERIES
proudly presents:

THE CORPORATE TRANSPARENCY ACT

The Corporate Transparency Act (the “CTA”) is a federal law passed by Congress and signed by the President to combat drug money laundering, terrorist financing, tax fraud, and other illegal activity by targeting the anonymity of criminals or terrorists operating behind and through entities.

As you may know, money laundering is the process of transferring money to businesses or real estate companies owned or controlled by criminals or terrorists. The money being transferred has been generated by criminal means (e.g., illegal drug sales, illegal weapons sales, etc.) or gathered to finance terrorism or other unlawful activities. The entity appears to be conducting a legitimate business (usually cash businesses so that legal and illegal cash can be intermingled) or the entity appears to be a real estate investment company buying up property. Once the illicit money is transferred to the entity, it appears that the entity has generated all the cash by legitimate means from the sale of goods, services, or real estate.

A. THE CTA’S PRIMARY REQUIREMENT.

What is the primary requirement of the CTA? With certain exceptions, the CTA requires all entities that have been created by filing or registering with a state’s secretary of state or similar government agency (hereinafter simply referred to as “a secretary of state”), to file a report with the U.S. Financial Crimes Enforcement Network (“FinCEN”). The entities that are required to file

a report with FinCEN are called “reporting companies,” and the report that is filed is called a “Beneficial Ownership Information Report” (“BOIR”).

B. WHAT ENTITIES ARE NOT REPORTING COMPANIES?

Virtually every corporation, limited liability company, limited partnership, and other business entities created in the U.S. are required to report, except those who, in general, are already registered with, regulated by, or licensed by a federal government agency. Examples of exempt entities are banks, insurance companies, CPA’s, tax-exempt entities, most companies involved in the securities industry, “large operating companies,” and inactive entities. (Note: estates and personal trusts that are not “business trusts” are not reporting companies because no filings are made with a secretary of state for them.)

“Large operating companies,” in general, are those which have reported \$5 million or more in revenues to the IRS, have a physical office in the United States, and employ more than 20 full-time employees in the U.S.

Owners of “inactive entities” need to be careful, because this exemption is more limited than it sounds. To be “inactive,” the entity must have been in existence on or before January 1, 2020 and must not: be engaged in active business, have a foreign owner, have had an ownership change in the past 12 months, own any assets of any kind, and have sent or received any funds greater than \$1,000 in the prior 12 months.

For more detailed information on what entities are exempt from reporting, see Section 1.2 of FinCEN’s *Small Entity Compliance Guide* (the “Guide”). The Guide is located at <https://www.FinCEN.gov/BOI>. Then, go to “Small Business Resources,” and click on the Guide.

C. WHAT MUST REPORTING COMPANIES REPORT?

In their BOIR, reporting companies must identify their “beneficial owners,” and, starting in 2024 and subsequent years, their “company applicants.”

1. **Beneficial Owners.** “Beneficial owners” are the primary focus of the CTA, and they are *individuals* (a) who own, *directly or indirectly*, 25% or more of the reporting company, or (b) who exercise “substantial control” over the reporting company.

a. **25% or More Owners.** The first point that should be noted in the preceding definition is the word “individuals.” In general, a reporting company never reports another entity as a beneficial owner of the reporting company. The purpose of the CTA is to identify and report in a BOIR the individuals, not entities, who ultimately own 25% or more of a reporting company. This is why the words “directly or indirectly” are used. The ownership of beneficial owners can be in the form of stocks, LLC membership interests, partnership interests, simple voting rights, or any option (put or call), warrant, or other instrument convertible into one of the preceding ownership rights.

b. **“Substantial Controllers.”** An individual exercises “substantial

control” over a reporting company and must be reported in a BOIR if the person is (a) a “senior officer,” (e.g., a President, Vice President, and any “Chief”: Chief Executive Officer, Chief Operating Officer, Chief Financial Officer, Chief Information Officer, etc.); (b) a person who can appoint or remove any such officers or a majority of corporate directors, general partners, or LLC managers; (c) any “important decision-maker;” or (d) any other person who exercises substantial control. For further information, see the Guide’s Section 2.1.

c. *Tip:* If you own stock in a publicly traded company, it is highly likely to be a “large operating company” that is not required to file a BOIR, and it is highly likely that you do not own 25% of it, so, for two different reasons, you do not need to worry about being reported as a beneficial owner of that company.

d. *Tip:* Be certain that any BOIR you file is consistent with, and does not conflict with, your or the reporting company’s income tax return, as applicable.

2. What Individuals Are Not Reported as Beneficial Owners? The following individuals are not reported as beneficial owners: (1) minor children (their parents or guardians must be reported as the beneficial owners instead); (2) an individual who merely acts on behalf of a beneficial owner, such as an agent or attorney-in-fact; (3) an employee who is not a senior officer and not a person who exercises substantial control over the reporting company; (4) a person who will have a *future* interest in, or substantial control over, a reporting company, such as a future beneficiary pursuant to a Will or Trust; and (5) creditors of the reporting company.

3. Example. For an example of how to determine beneficial owners, including substantial controllers, see the attached Appendix A.

4. Company Applicants. Newly created reporting companies in 2024 and thereafter must report who created the company by a filing with a secretary of state, i.e., both their (a) “direct filer” and (b) any person who directed or controlled the filing action. Any person who directly files, physically or electronically, the document that creates the entity with a secretary of state is a “direct filer” and must be reported as a “company applicant.” If anyone directs or controls that direct filer, that person is also a company applicant.

D. FILING A BOIR.

1. Deadlines.

a. The deadline for filing a BOIR for a reporting company created before 2024 is by January 1, 2025.

b. For reporting companies created in 2024, a BOIR must be filed within 90 calendar days of the earlier of: (i) the date the reporting company receives actual notice of its creation from a secretary of state, or (ii) the date the first public notice of its creation is given by a secretary of state (the earlier date being the “file date”).

c. For reporting companies created in or after 2025, a BOIR must be

filed within 30 calendar days after the file date.

2. How to File. The easiest way to file a BOIR is online by going to <https://www.FinCEN.gov/BOI> and clicking on “File a report using the BOIR E-Filing System.” Attached as Appendix B is an example of how to complete a BOIR for a reporting company formed before 2024 (thus, it does not have a “company applicant” – see below). Just follow the red arrows and the footnotes identified with other red symbols.

3. What You Will Need. You will need the reporting company’s state of filing, address, any tradename, and taxpayer identification number. For each beneficial owner, you will need his or her address, date of birth, and a scanned copy of their driver’s license or passport.

If you will be filing for multiple reporting companies or are a beneficial owner of more than one company, you may consider obtaining an optional FinCEN ID, so that you can insert that ID number rather than continuing to enter your personal information each time. A FinCEN ID can be obtained by going to <https://fincenid.fincen.gov/landing>. You will need the personal information referenced in the preceding paragraph.

4. Does a BOIR Need to Be Filed Every Year? No, the initial BOIR only needs to be updated if and only if any of the reported information changes or needs to be corrected. The update must be made within 30 calendar days of a change.

5. Will Barnes Walker File Your BOIR for You? Barnes Walker is filing BOIRs only if it assists clients to create reporting companies in 2024 and in future years. As you can see, a BOIR requires the collection of quite a bit of personal information, and for your personal protection, we do not want to have any more of this information than we need, should our security be breached. In addition, over time the beneficial ownership of reporting companies changes, and Barnes Walker has no independent means of verifying the current ownership. Further, as you will read below, there are substantial penalties for failing to provide correct information in a BOIR. Finally, once you have reviewed Appendix B and gone online yourself, you will find that filing a BOIR is fairly easy.

E. NONCOMPLIANCE.

1. Penalties. An intentional failure to file a BOIR, the intentional filing of false beneficial ownership information, the intentional withholding of such information, or the failure to correct or update such information in a BOIR is a federal felony with penalties of up to two years imprisonment and a fine up to \$10,000. (Typically, such crimes are investigated by the FBI and prosecuted by the U.S. Department of Justice.) *In addition*, there is a civil penalty of \$500 for each day that a violation continues. The reporting company, its senior officers, and the persons involved in the filing are subject to these penalties.

2. Court Case. As of March 2024, there is a U.S. District Court case out of Alabama called *National Small Business United v. Yellen*, in which the judge found the Corporate Transparency Act to be unconstitutional. However, the U.S. Department of Justice, on behalf of FinCEN, is appealing that case, and FinCEN is continuing to implement the CTA, exempting only

the particular individuals and entities that filed that case.

3. Our Recommendation. We expect the case to be overturned by the appellate courts, and, in all probability, the appeals process will not be completed by January 1, 2025, placing any non-filers by that date at risk. Our recommendation is that all parties to which the CTA applies should comply with it. After all, the U.S. Government already has access to all of the information requested by the BOIR – it is simply collecting it for a different database. For example, if you or the reporting company have filed your respective income tax returns, the IRS already knows your and the reporting company’s addresses, taxpayer identification numbers, the company’s state of filing, the companies you own, and how much you own. The U.S. Government also has access to each state’s driver license database, so it can access all that information, which includes your name, address, date of birth, and driver’s license number. Of course, if you have a passport, the U.S. Government already has all of that information.

If you would like a copy of this article emailed to you, please request one from Maggie Marshall at MMarshall@BarnesWalker.com. Again, however, remember that this article does not discuss all the details related to the Corporate Transparency Act or to the filing of a Beneficial Ownership Information Report. For such detail, please consult FinCEN’s *Small Entity Compliance Guide* referenced above. ***Finally, remember that the deadline for filing a BOIR for a reporting company created before 2024 is December 31, 2024, and the deadline for filing a BOIR this year is within 90 days of its creation.***

With warm regards,

Garret T. Barnes
Andre R. Perron

Adron H. Walker
John J. Shea

Jeffrey S. Goethe
M. Brandon Robinson

Important Note: *The information contained in the preceding Barnes Walker Educational Series article is summary in nature and is sent for educational purposes to you. This article should not be considered as legal advice for your situation, if any, nor is it intended as specific or detailed advice, as we do not have any information specific to your situation. Further, the preceding article is not intended to be an all-inclusive discussion of the Corporate Transparency Act, but a guide to the same, and there may be other matters not described in the article that may impact your particular situation. Therefore, always seek legal advice regarding your own unique situation. Finally, this article is intended as a public service and is not a solicitation seeking legal employment of our firm by you.*

APPENDIX A

Beneficial Owner/Substantial Controller Determination (and Company Applicant) Example

ABC Co. is the reporting company, was personally formed in 2024 by Lawyer L, and is owned 25% by Person X and 75% by DEF, LLC, which, in turn, is owned 1/3 by Person Y and 2/3's by GHI Partnership, which is owned 50% by father F, and 25% each by his minor children, C1 & C2, in the custody of F's ex-wife, XW. Person P is the president, Person V is the vice president, and Person S is the secretary and chief financial officer for ABC Co., but none own more than 25% of ABC Co.'s stock, and the retired founder, RF, can remove any of them from their office.

Who should be reported in ABC Co.'s Beneficial Ownership Information Report? (Remember, you do not report "sub-entities" in a BOIR, just the 25%+ beneficial owners, including "substantial controllers.")

First, ABC Co. is inserted in the BOIR as the reporting company.

Second, L is reported as the company applicant.

Next, X, as 25% owner of ABC Co., would be reported as a beneficial owner.

Y, as a 25% beneficial owner of ABC Co. (1/3 of DEF's 75%), would also be reported as a beneficial owner.

F, as a 25% beneficial owner of ABC Co. (50% of GHI's 2/3's of DEF's 75%), would be reported as a beneficial owner.

C1 & C2, are each 12.5% beneficial owners of ABC Co. (25% of GHI's 2/3's of DEF's 75%) and would not be reported as beneficial owners. (Even if C1 & C2 each actually owned 25% or more of ABC Co., they would not be reported as beneficial owners because they are minors. Instead, XW, who has their custody, would be reported as the beneficial owner of their stock.)

P, V, S, and RF would all be reported as beneficial owners because they exercise substantial control over ABC Co.

DEF, LLC and GHI Partnership are "sub-entities" and are not reported. Remember, you report the beneficial owners who ultimately "benefit" from and own the reporting company, directly or indirectly (e.g., X is a "direct" beneficial owner, and Y & F are beneficial owners indirectly). Think of beneficial owners as the ultimate owners of the reporting company who are reported, and any "pass-through" or "intermediate" entities as sub-entities that are not reported.


Remember also, that the ownership percentages that control are the percentages of ownership of the reporting company (e.g., ABC Co.), not the percentages of ownership of the sub-entities.

APPENDIX B




Welcome to the BOI E-Filing System


The BOI E-Filing System supports the electronic filing of the Beneficial Ownership Information Report (BOIR) under the Corporate Transparency Act (CTA). The CTA requires certain types of U.S. and foreign entities to report beneficial ownership information to the Financial Crimes Enforcement Network (FinCEN), a bureau of the U.S. Department of the Treasury.



File BOIR
Need to file a BOIR?
Click here!




Help
Looking for more
information? Click here



Beneficial Ownership Information (BOI) Reporting
Need to file a BOIR? Click here!

GET STARTED



Bank Secrecy Act (BSA) Reporting
Need to file another type of BSA report? Click here!

BSA E-FILING

News & Announcements

Jan 04 2024
Need assistance? Go to the Help section in the blue banner to find filing instructions and other guidance materials.



File the Beneficial Ownership Information Report (BOIR)


Select the filing method that works best for you:



File PDF BOIR

- Adobe Reader is required
- Prepare report offline at your own pace, save as you go
- Reuse PDF BOIR when filing updates/corrections
- Download BOIR transcript upon submission

Prepare BOIR **Submit BOIR**



File Online BOIR



- Adobe Reader NOT required
- Prepare report online and submit now
- Prepare new Online BOIR when filing updates/corrections
- Download BOIR transcript upon submission

Prepare & Submit BOIR





Complete the report in its entirety with all required information. Fields marked with an asterisk (*) symbol are the fields that, *at a minimum*, must be completed by all companies to file the report. Reporting companies, however, must include all information 31 CFR 1010.380(b) requires them to provide, regardless of whether a field is marked with an asterisk (*) symbol. These information requirements are summarized above under HELP.

- Filing Information
- Reporting Company
- Company Applicant(s)
- Beneficial Owner(s)
- Submit

Filing Information

 Need help? 

*1. Type of filing:

-  a. Initial report
-  b. Correct prior report
-  c. Update prior report
-  d. Newly exempt entity



2. Date prepared (auto-filled)



04/16/2024

- Previous
- Next 



- Filing Information
- Reporting Company
- Company Applicant(s)
- Beneficial Owner(s)
- Submit

Part I. Reporting Company Information

 Need help? 

-  3. Request to receive FinCEN ID
-  4. Foreign pooled investment vehicle

Legal name and alternate name(s)

 Need help? 

*5. Reporting Company legal name





6. Alternate name (e.g. trade name, DBA)


 

Add Alternate Name

Form of identification

 Need help? 

*7. Tax Identification type

 This box does not need to be completed unless you have a tradename that is different from your company's name.

Select an ID type ▼



*8. Tax Identification number



9. Country/Jurisdiction (if foreign tax ID only)

Select a country ▼

Jurisdiction of formation or first registration

[Need help?](#) ▼

*10. a. Country/Jurisdiction of formation

Select a country ▼



Current U.S. address

[Need help?](#) ▼

*11. Address (number, street, and apt. or suite no.)



*12. City



[Need help?](#) ▼

16. Existing reporting company (check if existing reporting company as of January 1, 2024)



17. (This item is reserved for future use)

Part II. Company Applicant Information

[Add Company Applicant](#)

[Need help?](#) ▼

Company Applicant #1 ^

Company applicant FinCEN ID

[Need help?](#) ▼

18. FinCEN ID

Legal name and date of birth

[Need help?](#) ▼

*13. U.S. or U.S. Territory

Select a country ▼

*14. State

Select a state ▼

*15. ZIP code

[Previous](#)

[Next](#)





16. Existing reporting company (check if existing reporting company as of January 1, 2024)

17. (This item is reserved for future use)

Part II. Company Applicant Information

Add Company Applicant

reserved for future use)

Company Appli

Add Comp

Attention

When Existing Reporting Company is indicated, all Company Applicant fields will be cleared/disabled. Do you wish to continue?

Yes

No



*19. Individual's last name

*20. First name

21. Middle name

22. Suffix

*23. Date of birth



Current address

Need help?



*24. Address type

Business Address

Residential Address

*25. Address (number, street, and apt. or suite no.)

*26. City

*27. Country/Jurisdiction

*28. State

*29. ZIP/Foreign postal code

Form of identification and issuing jurisdiction



Clicking on "Yes" will disable all of the company applicant boxes, so that you can go to "Next."

***30. Identifying document type**
 Select an ID type

***31. Identifying document number**

***32. Identifying document issuing jurisdiction**

a. Country/Jurisdiction
 Select a country/jurisdiction

b. State
 Select a state

c. Local/Tribal
 Select a local/tribal

d. Other local/Tribal description

***33. Identifying document image**
 Drag file here or [choose from folder](#)

Previous **Next**

- Filing Information
- Reporting Company
- Company Applicant(s)
- Beneficial Owner(s)**
- Submit

34. (This item is reserved for future use)

Part III. Beneficial Owner Information

Add Beneficial Owner

Need help?

Beneficial Owner #1

Need help?

35. Parent/Guardian information instead of minor child
 (check if the Beneficial Owner is a minor child and the parent/guardian information is provided instead)

Beneficial Owner FinCEN ID

Need help?

36. FinCEN ID

Exempt entity

Enter the *optional* FinCEN ID if a Beneficial Owner has one. Otherwise, continue on to enter the individual information for each Beneficial Owner.

37. Exempt entity

Legal name and date of birth

[Need help?](#)

*38. Individual's last name or entity's legal name

*39. First name

40. Middle name

41. Suffix

*42. Date of birth

Residential address

[Need help?](#)

*43. Address (number, street, and apt. or suite no.)

*44. City

*45. Country/Jurisdiction

*46. State

*47. ZIP/Foreign postal code

Form of identification and issuing jurisdiction

[Need help?](#)

*48. Identifying document type

*49. Identifying document number

*50. Identifying document issuing jurisdiction

a. Country/Jurisdiction




b. State

c. Local/Tribal

d. Other local/Tribal description

*51. Identifying document image

[Previous](#) [Next](#)

-  Driver's License or Current Passport
-  Driver's License or Passport Number
-  Copy of Driver's License or Passport

Complete all fields below before submitting. Directly after submission, a processing page will be displayed, followed by a page confirming the status of your report. This confirmation page will also give you an opportunity to download a transcript of your report.

*Email

[Empty text input field with a red arrow pointing to it]

*Confirm Email

[Empty text input field with a red arrow pointing to it]

*First Name

[Empty text input field with a red arrow pointing to it]


*Last Name

[Empty text input field with a red arrow pointing to it]

*I certify that I am authorized to file this BOIR on behalf of the reporting company. I further certify, on behalf of the reporting company, that the information contained in this BOIR is true, correct, and complete.

I agree

COMPLIANCE REMINDER: The willful failure to report complete beneficial ownership information to FinCEN, the willful failure to update beneficial ownership information provided to FinCEN when previously reported information changes, or the willful provision of false or fraudulent beneficial ownership information to FinCEN, may result in civil or criminal penalties. A person may also be subject to civil or criminal penalties for willfully causing a reporting company to report incomplete or false beneficial ownership information to FinCEN.

I am human  hCaptcha Privacy - Terms

Submit BOIR

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FINANCIAL CRIMES ENFORCEMENT NETWORK

BOI E-FILING | FILE BOIR HELP

Submission Status Confirmation

SUBMISSION INFORMATION

Status **FILING SUCCESSFUL. You may download the transcript below.**