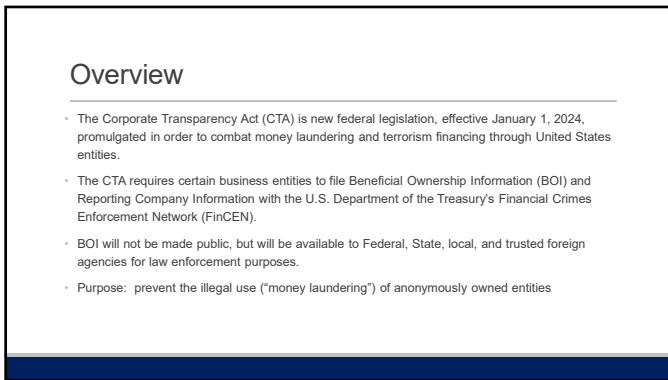
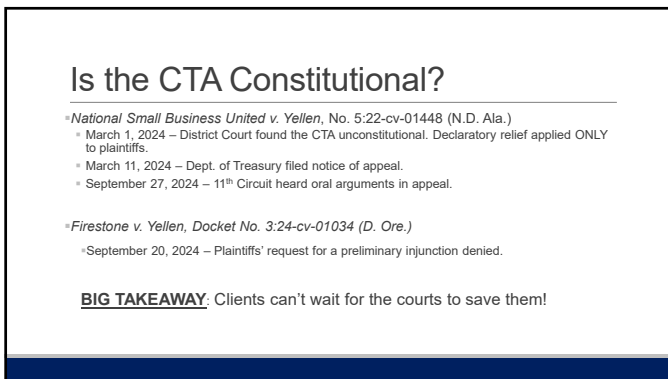


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Who is Required to Report

- Reporting Companies are required to report BOI and entity information to FinCEN.
- "Reporting Companies" are either domestic or foreign entities that are:
 - A corporation,
 - A limited liability company, or
 - Any entity created (or a foreign entity registered in the US) by the filing of a document with a secretary of state or any similar office under the law of a state or Indian tribe.
- It does not matter how long ago the entity was formed.
- Generally, trusts are exempted from reporting.
- 23 categories of exempt entities.

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Major Exempted Entities

- Entities already subject to federal regulatory regimes (e.g. banks, credit unions, insurance companies, investment companies, regulated public utilities, etc.).
- Publicly-traded companies.
- Tax-exempt entities (501(c) org., 527(e)(1) political org., or 4947(a) charitable trust).
- Large operating companies:
 - > 20 full-time employees in the US;
 - In previous year, filed federal income tax > \$5 million in gross receipts or sales from US sources; and
 - Operates physically at an office in the US.
- Inactive entities that:
 - Were formed prior to January 1, 2020;
 - Have not engaged in any business activity;
 - Are not owned by a foreign person and have not had a change of control in the prior 12 months;
 - Have not sent or received funds in an amount greater than \$1,000 in the prior 12 months; and
 - Hold no assets or interests in any other entity.

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FinCEN List of Exempted 23 Entities

- | | | |
|---|--|---|
| 1. Securities reporting issuer | 9. Other Exchange Act registered entity | 16. Public utility |
| 2. Governmental authority | 10. Investment company or investment adviser | 17. Financial market utility |
| 3. Bank | 11. Venture capital fund adviser | 18. Pooled investment vehicle |
| 4. Credit union | 12. Insurance company | 19. Tax-exempt entity |
| 5. Depository institution holding company | 13. State-licensed insurance producer | 20. Entity assisting a tax-exempt entity |
| 6. Money services business | 14. Commodity Exchange Act registered entity | 21. Large operating company |
| 7. Broker or dealer in securities | 15. Accounting firm | 22. Subsidiary of certain exempt entities |
| 8. Securities exchange or clearing agency | | 23. Inactive entity |

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Who are Beneficial Owners

- "Beneficial Owner" – Reporting Companies must file information for any individual who:
 - Owns/controls ≥ 25% ownership interests; or
 - Exercises "substantial control" over the reporting company.

For purposes of LLCs and other entities issuing capital or profit interests (including entities treated as partnerships for federal income tax purposes), ownership interests are based on the individual's capital and profit interests in the entity...a right to receive 25% of distributions will trigger BOI, even if ownership is less.

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Ownership Interest

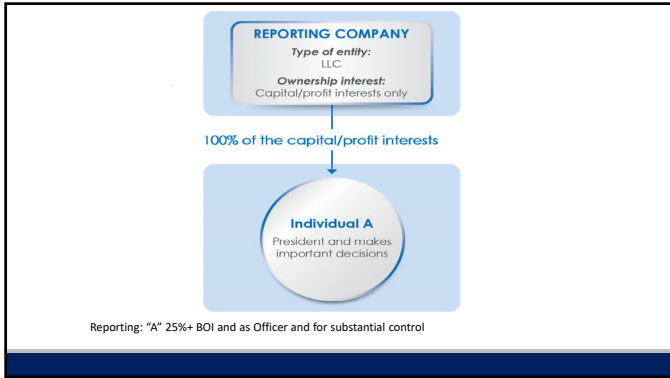
- Very broad:
 - Stock
 - Capital or profits interest ("units") in an LLC or partnership
 - Any convertible instrument (i.e., convertible debt, SAFEs)
 - No exceptions for future/contingent conversion rights
 - Any puts, calls, options, warrants
 - Anything else used to establish ownership

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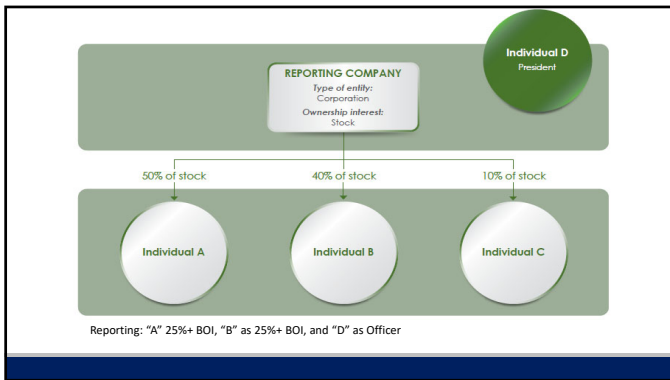
Substantial Control

- Those with "Substantial Control" include
 - senior officers;
 - those with authority to appoint or remove certain officers or a majority of directors
 - "Important decision-makers";
 - Those with any other form of substantial control over the reporting company
- Intends to capture anyone who is able to make important decisions on behalf of the entity.
 - This excludes employees whose economic benefits are derived solely from employment, but it does not exclude "senior officers"

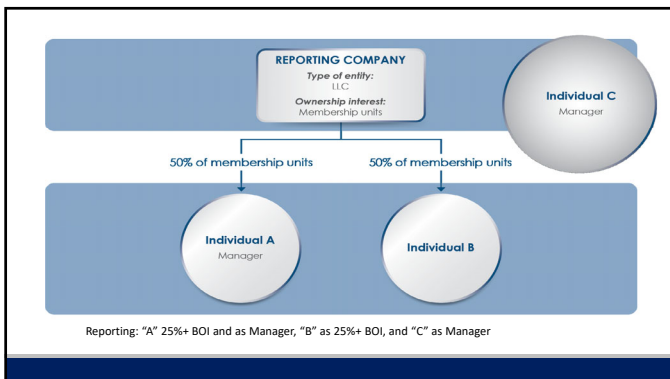
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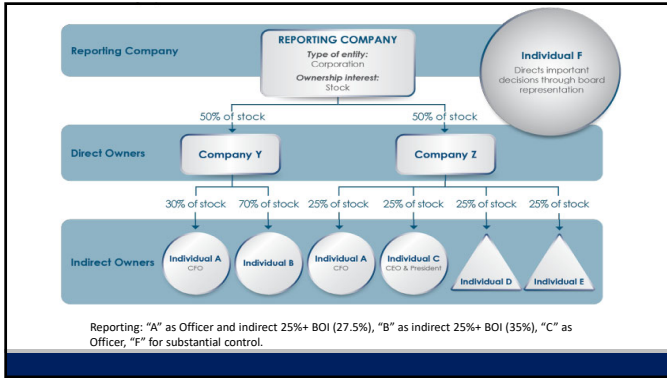
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Who are Company Applicants

- "Applicant" – Reporting Companies must file information for the individual who:
 - Directly files the document that first forms / registers the entity; or
 - Is primarily responsible for directing or controlling the filing of the relevant document by another.
- Applicants of preexisting entities are exempted.
- A Reporting Company may not have more than two (2) Applicants.

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Reporting Requirements

- Reporting Companies must report:
 - Full legal name & any trade name;
 - Principal place of business address;
 - Jurisdiction of formation / registration; and
 - Tax Identification Number.*
- Required Applicant/Beneficial Owners Information:
 - Full Legal Name;
 - Date of Birth;
 - Current Residential Address; and
 - Non-Expired U.S. Identification Document, or a Foreign Passport (requires an image of the identification document).
- FinCEN rejected the proposed collection of an individual's TIN.

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Phase-in of Reporting Requirements

- All new Reporting Companies – those formed or registered after January 1, 2024 – must report BOI for both their Beneficial Owners and Company Applicants to FinCEN within 90 days after formation or registration (measured from date of actual notice). After 2024, within 30 days after formation or registration.
- All existing Reporting Companies – those formed or registered before January 1, 2024 – must report BOI for their Beneficial Owners (but not their Company Applicants) to FinCEN no later than January 1, 2025.
- Updates – If there are any changes in the identities of Beneficial Owners or to any of their BOI (including change of address, passport numbers, etc.), a Reporting Company must file an updated report with FinCEN within 30 days of the change - regardless of when the Reporting Company learns of it.
- Reports will be submitted electronically using FinCEN's online system titled "Beneficial Ownership Secure System (BOSS)".

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FinCEN Identifiers

- FinCEN will allow Reporting Company, BOI or Applicant to obtain a numerical "FinCEN Identifier" which may be supplied in lieu of detailed info.
- He/she will also be responsible for any updates to the BOI.
- Reporting Companies will also be able to obtain their own FinCEN Identifiers.
 - e.g., if a person is a Beneficial Owner of several Reporting Companies, each of those companies will only have to report that person's FinCEN Identifier.

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Use of BOI information

The information collected pursuant to this filing is collected on a secure, nonpublic database, and is generally not available for government employees to disclose. The information is not subject to the Freedom Of Information Act

- Those who may access include:
 - Federal agencies engaged in national security, intelligence, and civil and criminal law enforcement
 - State, local, and tribal law enforcement agencies if "a court of competent jurisdiction" rules that those agencies should be allowed access to that information.
 - "Trusted" foreign law enforcement via intermediary U.S. federal agencies
 - The Department of the Treasury in connection with its official duties, including tax administration
 - Financial institutions in order to meet customer due diligence requirements under applicable law and only if the Reporting Company consents to the search.

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Penalties for Failure to Report

- Unlawful for any person to willfully provide false or fraudulent BOI or willfully fail to report complete / update BOI.
 - FinCEN will consider all facts relevant to a determination of willfulness when deciding whether to pursue enforcement actions.
- Civil Reporting Penalties:
 - \$500 per day for each day of outstanding violation up to \$10,000.
- Criminal Penalties:
 - Maximum 2 years imprisonment.
- No penalties for negligent reporting.
- Safe Harbor – No penalties in the event an individual who provides inaccurate information:
 - Did not know about the inaccuracy;
 - Were not attempting to evade reporting requirements;
 - Corrects inaccurate information “voluntarily and promptly,” but no more than 90 days after submission.
- Misuse of BOI can result in criminal fines up to \$250,000 and 5 years imprisonment.
- Senior officers of an entity that fails to file a required BOI report may be held accountable for that failure

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CTA Filing Best Practices

- Don't file Articles of Organization/Incorporation until all CTA information has been obtained in writing via questionnaire OR until client has confirmed in writing that you will not be responsible for CTA filings.
- Any entity formation questionnaire should explicitly obtain the client's consent to transmit required CTA information to FinCEN. The entity questionnaire should be signed by the client as to such consent and the accuracy of the information.
- Calendar CTA deadlines.
- Send post-formation letters that include CTA compliance information and explicitly states it is the client's obligation to notify you of future events that would trigger subsequent CTA filings.
- If you are going to be an Applicant, obtain a FinCEN identification number first.

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Lessons in BOI Reporting

- Be proactive about obtaining required BOI.
- FinCEN is focused on **willful** non-compliance. Keep this in mind when dealing with uncooperative beneficial owners.
 - Consider operating agreement or shareholder agreement updates to address beneficial owner non-compliance.
- What if a beneficial owner does not have required identification documentation?

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Resources

- BOI FAQ: <https://fincen.gov/boi-faqs>
- Small Entity Compliance Guide: <https://fincen.gov/boi/small-entity-compliance-guide>
- FinCEN Reference Materials: <https://fincen.gov/boi/Reference-materials>

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Questions?

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Tim Boone
 Email: Timothy.Boone@berliner.com
 Phone: (209) 336-0111

Practices:
 Real Estate, Tax Law, Corporate Law,
 Estate Planning

Tim's practice areas include complex real estate and business transactions, business formation, estate planning, and trust and estate administration. He has counseled clients in the negotiation and drafting of leases, easements, 1031 exchanges, the purchase and sale of real estate and business interests, business formation, and business and estate succession.

Prior to joining Berliner Cohen, Tim served as Vice President of Legal Services for Crescendo Interactive, a renowned leader in the field of charitable planning. While at Crescendo, he assisted nonprofit fundraisers, financial advisors, and attorneys in creating advanced estate and charitable plans.

Tim is a fourth-generation resident of Modesto and Stanislaus County and the proud grandson of a retired peach and almond farmer. He is also honored to give back to his community as a board member for the Stanislaus County Education Foundation, the Stanislaus County Estate Planning Council, and Modesto Sunrise Rotary.



About Berliner Cohen, LLP

Berliner Cohen serves the business and regulatory needs of private businesses and public agencies. For over 50 years, the firm has developed the special expertise required by a diverse client base consisting of some of Northern California's most influential and largest corporations, new ventures, leading real estate developers, cutting-edge technology companies, municipalities and public agencies, healthcare providers, and mortgage banking companies.

Berliner Cohen attorneys concentrate on providing experienced, knowledgeable and innovative solutions and services for our clients in numerous practice areas, including:

- » Business Litigation
- » Corporate and Tax
- » Employment
- » Hospitality
- » Estate Planning
- » Real Estate Litigation and Contract Negotiation
- » Land Use Planning and Development

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