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# **CAHEC Partners Conference**

## **Referee on the Field: “Know Your Customer” Regulations**

**Sarah Motley Stone**

**June 4, 2024**



# Welcome



## **Sarah Motley Stone**

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Sarah successfully leverages her foundation as a skilled trial attorney to navigate her clients through complex (often parallel) federal and state litigation, government investigations, and regulatory challenges.

Sarah advises corporations, individuals, and public entities to resolve multifaceted business disputes, defend class actions, and respond to federal criminal, civil, and regulatory investigations and state attorney general inquiries. She provides practical, data-driven advice to clients to mitigate risks and resolve problematic disputes. When clients are under attack on multiple fronts, Sarah excels in coordinating multi-jurisdictional legal defense efforts. With a keen ability to drive strategy and manage the execution of fact and expert case building, she successfully leads internal teams and collaborates with client's other trusted advisors.

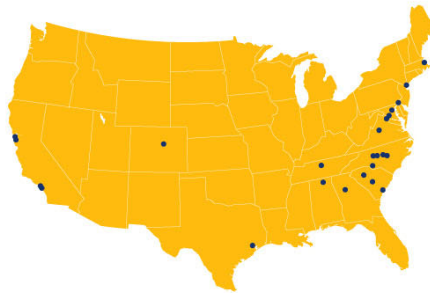
Within the firm, Sarah serves as the managing partner of the Charlotte, NC office.



# Womble Bond Dickinson at a glance



**32** Locations  
across the  
US and UK



## US

Atlanta  
Baltimore  
Boston  
Charleston  
Charlotte  
Charlottesville  
Columbia  
Denver  
Greensboro  
Greenville  
Houston  
Huntsville  
Irvine  
Los Angeles  
Nashville  
New York  
Raleigh  
Research Triangle Park  
San Francisco  
Silicon Valley  
Tysons  
Washington, D.C.  
Wilmington  
Winston-Salem



## UK

Bristol  
Edinburgh  
Leeds  
London  
Newcastle  
Plymouth  
Southampton  
Teesside

Consolidating our  
national reputations  
and regional heritage  
under one powerful  
transatlantic brand



More than  
**400** Partners  
**1,000** Lawyers

## Our sectors



Representing  
more than

**600**

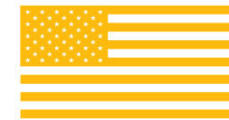
Publicly Traded  
Companies  
in the US and UK



**+150**  
Chambers  
rankings



**UK Top  
20** Law  
firm



**AmLaw  
87** ranked  
firm



**Ranked  
109th**  
global law firm  
by revenue



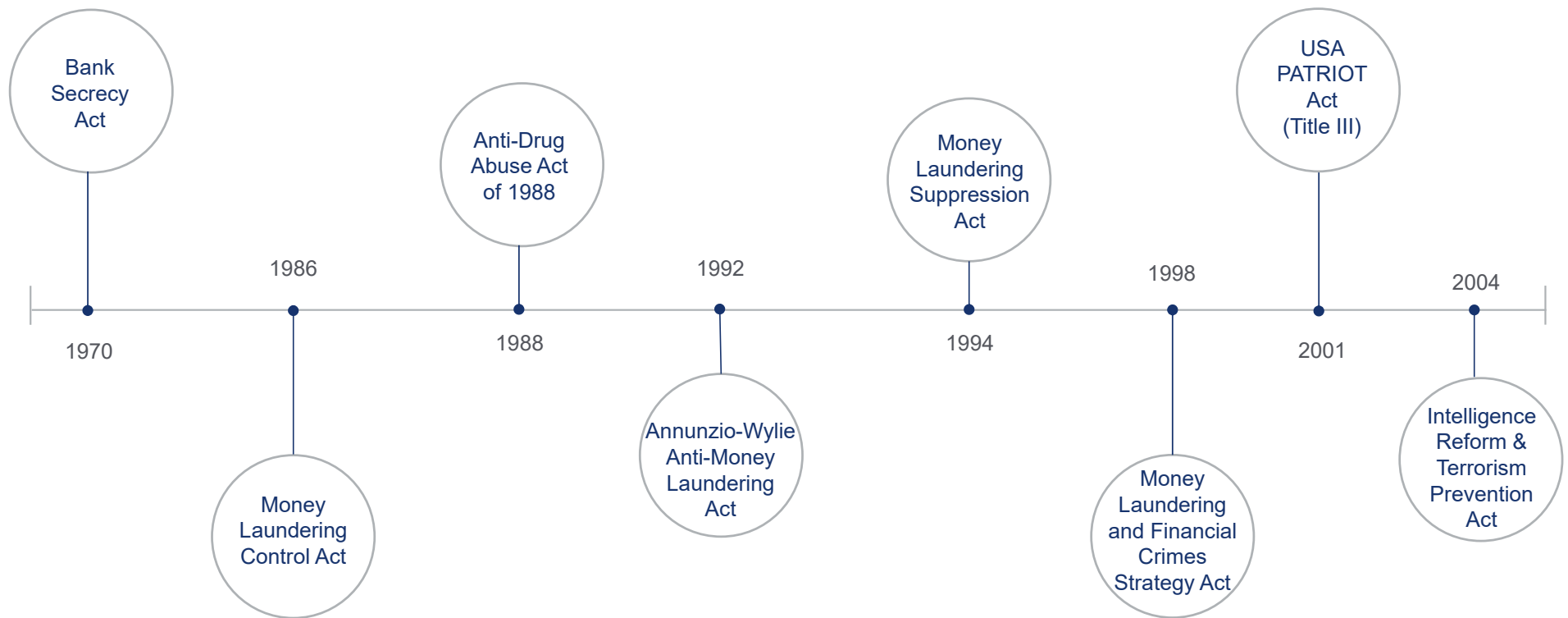


# What is Anti-Money Laundering (AML)?

# AML Primer

- Money laundering is the process of making illegally-gained proceeds seem legal.
- Typically, it involves three steps: **placement**, **layering**, and **integration**:
  1. Placement: illegitimate funds are introduced into legitimate financial systems.
  2. Layering: the money is moved around to create confusion, sometimes by wiring or transferring through numerous accounts.
  3. Integration: the money is integrated into financial systems through additional transactions until the illegally obtained money appears clean.

# AML Laws



# AML Enforcers

- Commodities Futures Trading Commission (CFTC)
- Federal Reserve
- Financial Crimes Enforcement Network (FinCEN)
- Financial Action Task Force (FATF)
- Financial Industry Regulatory Authority (FINRA)
- Federal Deposit Insurance Corporation (FDIC)
- National Credit Union Administration (NCUA)
- Office of the Comptroller of the Currency (OCC)
- Securities and Exchange Commission (SEC)
- United States Department of Justice (DOJ)
- United States Department of the Treasury

# FinCEN GTO

Geographic Targeting Order Covering TITLE INSURANCE COMPANY  
April 19, 2024



Financial Crimes Enforcement Network  
U.S. Department of the Treasury

Washington, D.C. 20220

## GEOGRAPHIC TARGETING ORDER

The Director of the Financial Crimes Enforcement Network (FinCEN) hereby issues a Geographic Targeting Order (Order) requiring TITLE INSURANCE COMPANY to collect and report information about the persons involved in certain residential real estate transactions, as further described in this Order.

### **I. AUTHORITY**

If the Director of FinCEN finds that reasonable grounds exist for concluding that additional recordkeeping and reporting requirements are necessary to carry out the purposes of the Bank Secrecy Act (BSA) or to prevent evasions thereof, the Director may issue an order that imposes such requirements on any domestic financial institution or nonfinancial trade or business or group of domestic financial institutions or nonfinancial trades or businesses in a geographic area. See 31 U.S.C. § 5326(a); 31 C.F.R. § 1010.370; Treasury Order 180-01. Pursuant to this authority, the Director of FinCEN hereby finds that reasonable grounds exist for concluding that the additional recordkeeping and reporting requirements described below are necessary to carry out the purposes of the BSA or prevent evasions thereof.<sup>1</sup>

### **II. ADDITIONAL RECORDKEEPING AND REPORTING REQUIREMENTS**

#### **A. Business and Transactions Covered by This Order**

1. For purposes of this Order, the “Covered Business” means TITLE INSURANCE COMPANY and any of its subsidiaries and agents.
2. For purposes of this Order, a “Covered Transaction” means a transaction in which:
  - i. Residential real property is purchased by a Legal Entity (as this term is defined in Section III.A of this Order);
  - ii. The purchase price of the residential real property is in the amount of \$50,000 or more in the City or County of Baltimore in Maryland, or in the amount of \$300,000 or more in any of the following areas:
    - (1) The Texas counties of Bexar, Tarrant, Dallas, Harris, Montgomery, Webb, or Travis;

<sup>1</sup> The Bank Secrecy Act, as amended, is codified at 12 U.S.C. §§ 1829b, 1951-1960 and 31 U.S.C. §§ 5311-5314, 5316-5336. Regulations implementing the Bank Secrecy Act appear at 31 C.F.R. Chapter X.



# AML Provisions

- **The Bank Secrecy Act (BSA) (31 USC § 5318(h))** requires financial institutions to establish AML Programs.
- At a minimum, an AML Program must be in writing and must include:
  - The development and maintenance of written policies and procedures, and supervisory controls;
  - They must be reasonably designed to ensure compliance with the BSA and assist a firm in detecting and reporting suspicious activity;
  - There must be a compliance officer;
  - There must be continuous education and ongoing employee training of appropriate personnel; and
  - There must be an independent review conducted to monitor and ensure an AML program is adequate.

# AML & Real Estate

- Bad actors can use real estate for money laundering.
- Examples include:
  - Property price manipulation, such as the undervaluation or overvaluation of properties;
  - Buyer collusion;
  - Quickly buying and selling properties;
  - Using third parties or companies to distance the transaction from the criminal source of funds; and
  - Private sales.

# Case Examples

- In 2020, a real estate developer used nominee accounts to conceal the actual beneficial owners of foreign investments in luxury condominiums. The developer ultimately owed \$500,000 and had to serve and a prison sentence.
- Also in 2020, a real estate company became involved with drug traffickers, and the company was used as a vehicle to purchase a warehouse using funds derived from illegal activities. Authorities seized the warehouse and imposed a \$1.5 million forfeiture.
- In another example, a real estate agent was implicated in money laundering activities when they facilitated transactions for the purchase of luxury condominiums using funds from overseas accounts. Authorities confiscated \$1.2 million linked to the agent's activities.

# Look for These Red Flags

- Investors who use **multiple banks** to stay under reporting thresholds;
- Sales that are conducted in **cash** with no mortgage lenders involved;
- A large **disparity** between the buyer's income and the value of the property;
- Purchases where the **ultimate beneficial owner** is not clear;
- A third party making the property purchase (**nominee** purchaser);
- A large geographical **distance** between where the investor is located and where they are buying property;
- Properties purchased using “**loan back**” (money is deposited in an offshore bank account and borrowed back by a shell company, the owner of which happens to be the person who controls the offshore bank account); and
- If the property is used as a physical base for **other criminal activity**, including if the property is being sublet.

# Reporting Obligation/Opportunity

- Local Law Enforcement
- FBI
- FinCEN SAR
- IRS Form 8300

<b>IRS Form 8300</b> (Rev. December 2023)	<b>Report of Cash Payments Over \$10,000 Received in a Trade or Business</b> See instructions for definition of cash. Use this form for transactions occurring after December 31, 2023. Do not use prior versions after this date. For Privacy Act and Paperwork Reduction Act Notice, see the instructions.	<b>FinCEN Form 8300</b> (Rev. August 2014) OMB No. 1506-0018 Department of the Treasury Financial Crimes Enforcement Network
<b>1</b> Check appropriate box(es) if: <b>a</b> <input type="checkbox"/> Amends prior report; <b>b</b> <input type="checkbox"/> Suspicious transaction.		
<b>Part I Identity of Individual From Whom the Cash Was Received</b>		
<b>2</b> If more than one individual is involved, check here and see instructions <input type="checkbox"/>		
<b>3</b> Last name	<b>4</b> First name	<b>5</b> M.I.
		<b>6</b> Taxpayer identification number
<b>7</b> Address (number, street, and apt. or suite no.)		<b>8</b> Date of birth (see instructions)
		M M D D Y Y Y Y
<b>9</b> City	<b>10</b> State	<b>11</b> ZIP code
		<b>12</b> Country (if not U.S.)
		<b>13</b> Occupation, profession, or business
<b>14</b> Identifying document (ID)	<b>a</b> Describe ID	<b>b</b> Issued by
	<b>c</b> Number	



**BSA E-Filing System**  
 Financial Crimes Enforcement Network

Login | File FBAR

Search

HOME ABOUT RESOURCES NEWSROOM FILE FBAR ENROLL HELP

### Welcome to the BSA E-Filing System

The BSA E-Filing System supports electronic filing of Bank Secrecy Act (BSA) forms (either individually or in batches) through a FinCEN secure network. BSA E-Filing provides a faster, more convenient, more secure, and more cost-effective method for submitting BSA forms. [Learn more about BSA E-Filing here.](#)

Bank Secrecy Act (BSA) Reporting  
 Ready to begin filing a BSA report?  
 Click here to begin!

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

### News

Dec 20 2023 [FinCEN Further Extends FBAR Deadline for Cert...](#)

Oct 16 2023 [FinCEN Provides FBAR Relief to Filers Affected...](#)

Oct 13 2023 [FinCEN Extends FBAR Deadline for Victims of R...](#)

[More News](#)



# What is the Know Your Customer (KYC) Rule?

# AML & KYC

- Financial institutions work to combat money laundering with **Know Your Customer (KYC)** provisions.
- KYC helps to determine the identity of new clients and whether their funds are from a legitimate source.
- During the KYC process, financial institutions screen new customers against lists of parties that pose a higher-than-average risk of money laundering, such as:
  - Criminal suspects;
  - Individuals and companies under economic sanctions; and
  - Politically exposed people (e.g., foreign public officials).

# KYC Document Examples

- Bank statements
- Driver's license
- Passport
- Proof of income
- Utility bills

# Penalties for AML & KYC Non-Compliance

- **Civil penalties** = fines, license revocation
- **Criminal penalties** = imprisonment

# Case Examples

- Earlier this year, a banking executive plead guilty to evading AML regulations, specifically admitting that he did not follow KYC reporting requirements. The executive faces a penalty of 10 years in prison alongside a \$20,000 fine.
- Last year, a large cryptocurrency exchange platform's CEO pled guilty to knowingly avoiding KYC procedures. The CEO was fined \$50 million and sentenced to four months in prison.



# Takeaways

- Make sure your compliance procedures are up-to-date and regularly check on these processes.
- Make sure you have proper AML and KYC procedures in place.
- Make sure your compliance training is regularly updated and employees receive comprehensive training.



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# Corporate Transparency Act

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## CAHEC Partners Conference

Referee on the Field: "Know Your Customer" Regulations

**KUTAKROCK**

[kutakrock.com](https://kutakrock.com)

June 4, 2024

# Disclaimer

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Caitlin Gustafson



Asher Ball



# Kutak Rock Overview

## National Reach. Local market presence.

- National footprint: We're wherever your legal needs arise.
- Local market presence: We understand the business and communities we share.

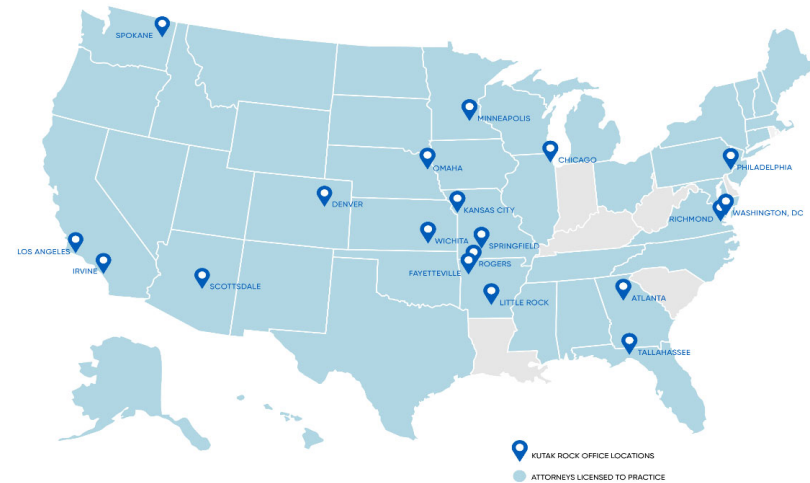
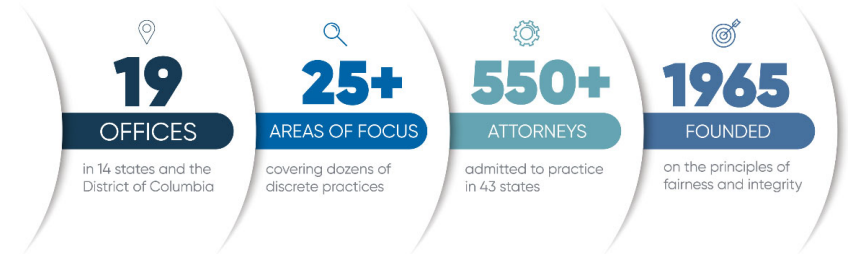
## The experience you need. The bench strength you want.

- 550+ attorneys serving the full range of transactional and litigation services.

## An enduring value proposition.

- High-quality legal service at a fair price.
- Mindful of YOUR ever-evolving business objectives.

## Commitment to Inclusive Engagement.



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# Overview of the Corporate Transparency Act

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# First things first:

The CTA has been  
found to be  
unconstitutional  
....but

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ALABAMA  
NORTHEASTERN DIVISION

NATIONAL SMALL BUSINESS  
UNITED, d/b/a the NATIONAL  
SMALL BUSINESS  
ASSOCIATION, *et al.*,

Plaintiffs,

v.

JANET YELLEN, in her official  
capacity as Secretary of the  
Treasury, *et al.*,

Defendants.

Case No. 5:22-cv-1448-LCB

MEMORANDUM OPINION

# Background

- Intended to help prevent and combat money laundering, terrorist financing, corruption, tax fraud and other illicit activity
- CTA aims to provide a centralized source of information that can be used by law enforcement, financial institutions and certain federal and state agencies/regulators



# BOI Report Access

Who can access BOI Report?	For what purpose?
Federal agencies	For national security, intelligence and law enforcement activities (as defined)
State, local and tribal law enforcement	For criminal or civil investigations
Foreign national security, intelligence or law enforcement activity	For assistance in a law enforcement investigation or prosecution, or a national security or intelligence activity authorized under foreign law
Financial institutions (FIs) and their regulators	To assist in Customer Due Diligence (CDD) or to assess, supervise or enforce, etc., FI compliance with CDD requirements
US Treasury Department	As required by official duties and for tax administration





## When must reporting companies comply with the CTA?

- In existence prior to January 1, 2024, initial BOI report must be filed **by January 1, 2025**
- Formed on or after January 1, 2024, initial BOI report must be filed within **90 days** after the date of formation
- Formed on or after January 1, 2025, initial BOI report must be filed within **30 days** after the date of formation

# What is a domestic reporting company?

- A corporation;
- A limited liability company (LLC); or
- Any entity created by the filing of a document with a secretary of state or any similar office under the law of a State or Indian tribe.
  - Includes: limited partnerships (LPs), limited liability partnerships (LLPs), limited liability limited partnerships (LLLPs) and statutory trusts created by filing a document (business trusts/statutory trusts)

NOTE: There are also “foreign reporting companies,” which are entities formed in a foreign country and registered to do business in any State or tribal jurisdiction by the filing of a document with a secretary of state or any similar office under the law of a State or Indian tribe

# What is not a reporting company?

- **Sole proprietorships** – nothing filed
- **Most trusts** – so long as nothing filed
  - see Del. Code tit. 12, § 3810, which says “Every statutory trust shall file a certificate of trust in the office of the Secretary of State”
- **General partnerships** – so long as nothing filed
  - see Del. Code tit. 6, § 106(c), which requires filing of statement of partnership existence

-- A sole proprietorship filing a document with a government agency to obtain (1) an EIN, (2) a fictitious business name, or (3) a professional or occupational license does not create a new entity (*FinCEN FAQ C.6*)

# What are the exemptions?

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

## SELECTED EXEMPTIONS

### 1 – Securities reporting issuer

An entity qualifies for this exemption if either of the following criteria apply:

1. the entity is an issuer of a class of securities registered under section 12 of the Securities Exchange Act of 1934; or
2. the entity is required to file supplementary and periodic information under section 15(d) of the Securities Exchange Act of 1934.

## SELECTED EXEMPTIONS

### 2 – Governmental authority

An entity qualifies for this exemption if **both** criteria apply:

1. the entity is established under the laws of the United States, an Indian tribe, a State, or a political subdivision of a State, or under an interstate compact between two or more States; and
2. the entity exercises governmental authority on behalf of the United States or any such Indian tribe, State, or political subdivision.

May be read narrowly to include only these powers (no guidance from FinCEN to date):

- Power to tax
- Power of eminent domain
- Police powers

## SELECTED EXEMPTIONS

MANY EXEMPTIONS ARE  
[INTENTIONALLY] VERY SPECIFIC

### 3 – Bank

An entity qualifies for this exemption if any of the following criteria apply:

1. is a “bank” as defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813);
2. is a “bank” as defined in section 2(a) of the Investment Company Act of 1940 (15 U.S.C. 80a-2(a)); or
3. is a “bank” as defined in section 202(a) of the Investment Advisers Act of 1940 (15 U.S.C. 80b-2(a)).

### 15 – Public Accounting firm

An entity qualifies for this exemption if it is:

- a public accounting firm registered with the PCAOB in accordance with section 102 of the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7212).



## SELECTED EXEMPTIONS

### 12 – Insurance company

An entity qualifies for this exemption if it is:

- an insurance company as defined in section 2 of the Investment Company Act of 1940 (15 U.S.C. 80a–2).

### 13 – State-licensed insurance producer

An entity qualifies for this exemption if **both** of the following criteria apply:

1. It is an insurance producer that is authorized by a State and subject to supervision by the insurance commissioner or a similar official or agency of a State; and
2. It has an operating presence at a physical office within the United States.
  - The term “operating presence at a physical office within the United States” means that an entity regularly conducts its business at a physical location in the United States that the entity owns or leases and that is physically distinct from the place of business of any other unaffiliated entity.

## SELECTED EXEMPTIONS

### 18 – Pooled investment vehicle

An entity qualifies for this exemption if **both** criteria apply:

1. Either of these statements apply to the entity:
  - a. The entity is an investment company, as defined in section 3(a) of the Investment Company Act of 1940 (15 U.S.C. 80a-3(a); **or**
  - b. The entity is a company that would be an investment company under that section but for the exclusion provided from that definition by paragraph (1) or (7) of section 3(c) of that Act (15 U.S.C. 80a-3(c)); **and** is **identified by its legal name by the applicable investment adviser in its Form ADV**, (or successor form) filed with the SEC or will be so identified in the next annual updating amendment to Form ADV required to be filed by the applicable investment adviser pursuant to rule 204-1 under the Investment Advisers Act of 1940 (17 CFR 275.204-1).
- and**
2. The entity is operated or advised by any of these type of exempt entities:
  - a. Bank (as defined in exemption #3);
  - b. Credit union (as defined in exemption #4);
  - c. Broker or dealer in securities (as defined in exemption #7);
  - d. Investment company or investment adviser (as defined in exemption #10); **or**
  - e. Venture capital fund adviser (as defined in exemption #11).

## SELECTED EXEMPTIONS

### 19 – Tax-exempt entity

An entity qualifies for this exemption if it is:

- A. An organization that is described in section 501(c) of the Internal Revenue Code of 1986 (Code) (*determined without regard to section 508(a) of the Code*) and exempt from tax under section 501(a) of the Code;
- B. A political organization, as defined in section 527(e)(1) of the Code, that is exempt from tax under section 527(a) of the Code;  
or
- C. A trust described in paragraph (1) or (2) of section 4947(a) of the Code.

## SELECTED EXEMPTIONS

### 21 – Large Operating Company

An entity qualifies for this exemption if all of the following apply:

1. Entity employs more than 20 full time employees in the United States;
2. Entity has an operating presence at a physical office within the United States; and
3. It filed a Federal income tax or information return in the United States for the previous year demonstrating more than \$5,000,000 in gross receipts or sales

- “[D]etermination of the number of employees is to be made on an entity-by-entity basis.”

- Newly formed entities will not qualify.

## SELECTED EXEMPTIONS

### LEGEND:

Applicable

Not  
applicable

## 22 – Subsidiary of certain exempt entities

Entity's **ownership interests** are [entirely] controlled or wholly owned, directly or indirectly, by one or more of the entities described in the exemptions shown in **green** below:

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

To qualify, a subsidiary's ownership interests must be **fully, 100 percent** owned or controlled by an exempt entity. (FAQ L.6)

## SELECTED EXEMPTIONS

### 23 – Inactive entity

An entity qualifies for this exemption if all six of the following criteria apply:

1. Was in existence on or before January 1, 2020;
2. Is not engaged in active business;
3. Is not owned by a foreign person, whether directly or indirectly, wholly or partially;
4. Has not experienced any change in ownership in the preceding 12-month period;
5. Has not sent or received any funds in an amount > \$1,000 either directly or through any financial account in which the entity or any affiliate of the entity had an interest, in the preceding 12-month period; **and**
6. Does not otherwise hold any kind or type of assets, whether in the U.S. or abroad, including any ownership interest in any corporation, LLC or other similar entity

# CTA Analysis

## **Step 1: Is entity a “reporting company” required to file a BOI report under the CTA?**

- Is it an entity formed by filing a document?
- Is it eligible for an exemption?

## **Step 2: Identify:**

- Company Applicants
  - Beneficial Owners
- and then gather information from those individuals



# Who is a company applicant?

- The individual who directly files the document that creates the reporting company; and
- If more than one individual is involved in the filing of the document, the individual who is primarily responsible for directing or controlling such filing

Maximum of two company applicants

*\* Entities in existence prior to January 1, 2024 are not required to provide company applicant information*

# Who is a beneficial owner?

Any individual who, directly or indirectly, either:

- **exercises substantial control** over such reporting company; or
- **owns or controls at least 25 percent of the ownership interests** of such reporting company

Number of potential beneficial owners is unlimited

**\*\*Beneficial owner is a misnomer.**

**An individual can be a beneficial owner without owning anything!**

# Who is a beneficial owner?

## -What is “substantial control”?

- **Senior Officer**

- President, CFO, GC, CEO, COO or any other officer who performs a similar function
- Includes any person exercising the authority of any of the foregoing

- **Appointment or Removal Authority**

- Authority over the appointment or removal of any senior officer or a majority of the Board or similar body

- **Important Decision-Maker**

- Directs, determines, or has substantial influence over important decisions made by the reporting company

- **Catch-all**

- Has any other form of substantial control over the reporting company.

# Who is a beneficial owner?

## -What is an “ownership interest”?

### EQUITY

- stock & membership units/interests
- interest in a joint venture
- *regardless if it confers power or voting rights*

### CAPITAL OR PROFITS INTEREST

- partnership interests

### CONVERTIBLE INSTRUMENT

- Convertible Note
- Simple Agreement for Future Equity (SAFE)

### OPTION / PRIVILEGE

- Put right
- Call right
- Straddle right
- Other option / privilege

### CATCH – ALL

- Any other instrument, contract, arrangement, understanding, relationship, or mechanism to establish ownership

*Examples for discussion purposes only and are not exhaustive*

# Who is a beneficial owner?

## -How are “ownership interests” calculated?

Identify types of ownership interests

Identify individuals that hold those ownership interests

Identify individuals who, directly or indirectly, own or control  $\geq 25\%$  of the ownership interests of the company

### LIMITED LIABILITY COMPANY EXAMPLE

**Reporting company**

50% of membership units

**ABC LLC**

50% of membership units

**XYC Corp.**  
CTA EXEMPT

Special Rule

60% of membership units

**Individual B**

**30%**

40% of membership units

**Individual B**

20%

100% of stock

**Individual C**

# What is required to be in a BOI report?

## Info about reporting company

Info about each beneficial owner

Info about each company applicant\*

- Legal name
- Any trade names or dbas
- Current street address of its principal place of business in the US
- Jurisdiction of formation/registration
- Taxpayer Identification Number (EIN or if disregarded entity owned by an individual, SSN)

# What is required to be in a BOI report?

Info about reporting company

**Info about each beneficial owner**

Info about each company applicant\*

- Full legal name
- Date of birth
- Current residential street address (cannot use business address)
- Unique identifying number of one of the following ID documents:
  - Non-expired passport issued by the US government;
  - Non-expired driver's license issued by a State;
  - Non-expired ID document issued by a State, local government of Indian tribe for purposes of identifying the individual;
  - Non-expired passport issued by a foreign government (only when individual does not have one of the other three forms of ID listed above)
- An image/copy of such ID document



# What is required to be in a BOI report?

Info about reporting company

Info about each beneficial owner

**Info about each company applicant\***

*\* Entities in existence prior to January 1, 2024 are not required to provide company applicant information*

- If reporting company formed **on or after January 1, 2024**, must also report foregoing biographical information for company applicants
- Company applicants who form or register an entity in the course of such company applicant's business **must** use street address of such business instead of the company applicant's residential address

# When must a BOI report be updated?

- Within **30 days** after the change of any information contained in a previously submitted BOI report
  - Changes to reporting company's information (name, dbas, address, etc.)
  - Beneficial owner changes
  - Change to information reported for any particular beneficial owner

*\* Not required to update information reported for any company applicant*



## FinCEN Identifier

- **What is it?** Unique 12-digit ID number that can be obtained by an individual by providing the same information as required on a BOI report directly to FinCEN
- **Why use it?**
  - Avoids the need to share individual's PII with reporting company(ies)
  - If an individual obtains a FinCEN identifier, then the individual is responsible for submitting updates to their biographical information by updating their FinCEN Identifier form
    - Examples: changing legal name, moving to a new address or expiration of an ID document
- **How to get one?** Obtain login.gov account & then complete FinCEN ID application

# What are the penalties for violating the CTA?

- The **reporting company** is responsible for its CTA filing
- Senior officers can be liable for willful failures in reporting as well
- **Willful** violation can lead to:
  - civil penalty of up to **\$591 for each day** (inflation-adjusted) that a violation continues; and
  - criminal penalties of a fine of **up to \$10,000** or **two years of prison** (or both)
- Potential violations include:
  - **willfully** failing to file a BOI Report (could include “willful blindness”?)
  - **willfully** providing false or fraudulent information
  - **willfully** failing to correct or update previously reported BOI

## Where to file BOI Report:



BOI E-Filing System located at:  
<https://boiefiling.fincen.gov/fileboir>

## Where to obtain FinCEN ID:



Sign in/create login.gov account and then complete FinCEN ID Application at:  
<https://fincenid.fincen.gov/landing>

Step-by-Step Instructions for obtaining FinCEN ID: <https://fincenid.fincen.gov/assets/helpContent/FinCEN-ID-Step-By-Step-Instructions-20240104.pdf>

## Beneficial Ownership Information Report (BOIR)

OMB No. 1506-0076

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

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

\*Confirm Email

\*First Name

\*Last Name

**\*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.

# Certification

- Certification is required when submitting form

“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.”



BENEFICIAL  
OWNERSHIP INFORMATION

## Small Business Resources



Small Entity Compliance  
Guide



<https://www.fincen.gov/boi/small-entity-compliance-guide>



Frequently Asked Questions



<https://www.fincen.gov/boi-faqs>



# CTA & LIHTC

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## Practice Pointers



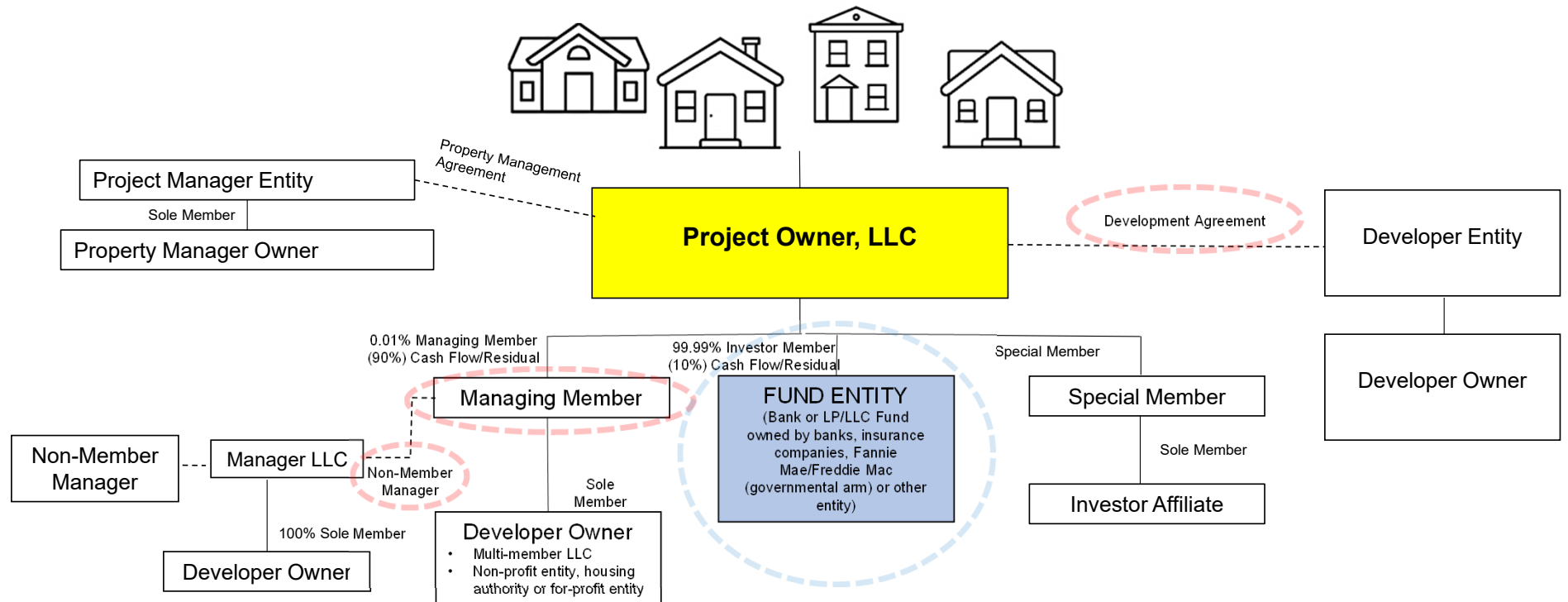
## ① Time Limits

- Multiple steps during a LIHTC closing could require compliance:
  - Initial entity formation:
    - January 1, 2025 deadline for pre-2024 entities
    - 90 days after date of formation for 2024 entities
    - 30 days after date of formation for 2025 entities
  - At LIHTC closing:
    - will have 30 days to make an updated filing if necessary (or not later than January 1, 2025 if entity was formed prior to 2024)



## ② Organizational Charts

- Even more important now
  - Before this year we might need it to resolve tax issues, but now we need detailed charts for CTA due diligence and for future compliance
- Also consider whether to include parties that may exercise “substantial control” or that may have “ownership interests” (developer, property manager, etc.)





### ③ Determine Exemptions

- GP/Developer must conduct their own legal analysis to determine whether CTA exemptions may apply
- Investors will be asking questions and looking for supporting documents/analysis behind any claim that a LIHTC entity is exempt from CTA reporting requirements

## ④ What You Should Ask Your Investor Partners

- Is the investor LP itself exempt from CTA requirements?
  - If not, what information will the GP need to make a filing for the reporting company?
- Even if the fund is exempt, if the lower-tier operating entity is a reporting company (aka not exempt), the lower-tier entity will need to analyze who its beneficial owners will be under both prongs of the definition:
  - exercises substantial control; or
  - owns or controls at least 25% of the ownership interests



## Special Rule in 31 C.F.R. § 1010.380(b)(2)(i)

(i) *Reporting company owned by exempt entity.* If one or more exempt entities under paragraph (c)(2) of this section has or will have a direct or indirect ownership interest in a reporting company and an individual is a beneficial owner of the reporting company **exclusively by virtue of the individual's ownership interest in such exempt entities**, the report may include the names of the exempt entities in lieu of the information required under paragraph (b)(1) of this section with respect to such beneficial owner.



# Definition of Substantial Control

## 31 C.F.R. § 1010.380(b)(2)(i)

An individual exercises substantial control over a reporting company if the individual:

- (A) Serves as a senior officer of the reporting company;
- (B) Has authority over the appointment or removal of any senior officer or a majority of the board of directors (or similar body);
- (C) Directs, determines, or has substantial influence over important decisions made by the reporting company, including decisions regarding:
  - (1) The nature, scope, and attributes of the business of the reporting company, including the sale, lease, mortgage, or other transfer of any principal assets of the reporting company;
  - (2) The reorganization, dissolution, or merger of the reporting company;
  - (3) Major expenditures or investments, issuances of any equity, incurrence of any significant debt, or approval of the operating budget of the reporting company;
  - (4) The selection or termination of business lines or ventures, or geographic focus, of the reporting company;
  - (5) Compensation schemes and incentive programs for senior officers;
  - (6) The entry into or termination, or the fulfillment or non-fulfillment, of significant contracts;
  - (7) 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; or
- (D) Has any other form of substantial control over the reporting company.



## 5 Documentation

- Definitions, representations, warranties, and covenants regarding the CTA are already working their way into equity documents
  - Typically, an indemnity that goes both ways regarding noncompliance will be included as well
- Reporting obligations will no doubt extend to CTA compliance as well.
  - Upper-tier investors are including in their requirements for syndicators delivery of BOI reports for lower-tier operating entities and their general partners/managing members.

# Thank you for attending

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Any questions?