



Business Law Bulletin
Corporate Transparency Act
June 28, 2024

The Corporate Transparency Act (CTA) is a new law that requires many small and medium-sized businesses to report information about their “beneficial owners” to the Financial Crimes Enforcement Network (FinCEN). For more information, please refer to FinCEN’s Frequently Asked Questions at: <https://www.fincen.gov/boi-faqs>.

Who Must File.

All corporations, LLCs, and other entities that were created by filing with a secretary of state (or similar office) are considered “reporting companies” and, unless exempt, must file a Beneficial Ownership Information Report (BOI report).

Exemptions.

The CTA includes 23 exemptions from the reporting obligations. Such “exempt entities” include certain large operating companies, certain subsidiaries, many nonprofits, banks, and publicly traded companies. A full list of all 23 exemptions can be found in FinCEN’s Small Entity Compliance Guide: <https://www.fincen.gov/boi/small-business-resources>.

What Information Must be Provided.

A reporting company is required to report the following information about itself: full legal name; any trade name or “doing business as” name; street address of principal place of business (or primary location in the United States if a foreign entity); jurisdiction of formation; and IRS taxpayer identification number.

In addition, a reporting company is required to report the following information about each of its beneficial owners: full legal name; date of birth; street address of primary residence; unique identifying number and the issuing jurisdiction (from U.S. passport, state driver’s license, or other government-issued identification card); and image of such unique identifying number document. In addition, for entities created on or after January 1, 2024, a reporting company is required to report the above information about its company applicants.

FinCEN Identifiers.

We strongly recommend all beneficial owners obtain a FinCEN Identifier (FinCEN ID), which a reporting company may use in the place of an individual's required personal information when completing a BOI report. There is no fee for obtaining a FinCEN ID, and the FinCEN website contains step-by-step instructions: <https://www.fincen.gov/boi>.

Beneficial Owners.

Two groups of individuals are considered beneficial owners of a reporting company: (1) any individual who directly or indirectly owns or controls at least 25% of the "ownership interest" of the reporting company; and (2) any individual who directly or indirectly exercises "substantial control" over the reporting company. Examples of "ownership interest" include shares of stock, membership interests, partnership interests, profits interests, convertible promissory notes, warrants, and options. Examples of individuals who exercise "substantial control" include board members, senior officers, and managers. Any individual who directs, determines, or has substantial influence over important decisions (e.g., decisions about a reporting company's business, finances, and/or structure) is considered a beneficial owner under the CTA. A settlor, trustee, and executor are considered a beneficial owner under the CTA; whereas, a trust beneficiary may be considered a beneficial owner depending on the terms of the trust.

Company Applicants.

Reporting companies created on or after January 1, 2024 are also required to report information about their company applicants. Company applicants include the individual who directly files the document that creates the company and the individual who is primarily responsible for directing or controlling the filing.

Important Filing Deadlines.

Reporting companies created prior to January 1, 2024 have until **January 1, 2025** to file an initial BOI report.

Reporting companies created on or after January 1, 2024 have **90 calendar days** after receiving notice that its creation or registration is effective to file an initial BOI report.

Reporting companies created on or after January 1, 2025 will have **30 calendar days** after receiving notice that its creation or registration is effective to file an initial BOI report.

In addition, if there is a change to previously reported information about the reporting company or its beneficial owners, or a change in beneficial owners, an updated report must be filed within **30 days** of the change. Likewise, if you learn of an inaccuracy in a previously filed BOI report, your company must correct it by filing a corrected report no later than **30 days** after you became aware of the inaccuracy or had reason to know of it.

How to File.

BOI reports must be filed electronically, which can be done directly without fee through FinCEN's e-filing portal: <https://boiefiling.fincen.gov/>. Alternatively, we will arrange for the filing as part of the CTA services we are offering (see below for more information).

Recommended Updates to Company Procedures and Governing Documents.

We strongly recommend that your company require all its beneficial owners to obtain a FinCEN ID to greatly reduce its ongoing monitoring and reporting burden under the CTA. We further recommend implementing new procedures to monitor changes to its beneficial owners that will require timely updated reports to FinCEN. SMT can assist with formalizing such procedures and other CTA compliance obligations including appropriate amendments to your company's governing documents.

Privacy.

According to FinCEN, BOI reports will be stored in a secure, non-public database and FinCEN will work closely with other agencies to ensure the reported information is used only for authorized purposes in a way that protects its security and confidentiality.

Penalties.

The potential penalties for willfully failing to file a BOI report or report changes, or for providing false beneficial ownership information include: (i) civil penalties of up to \$500 per day (adjusted annually for inflation), up to \$10,000 in total fines; and (iii) imprisonment for up to two years. Both individuals and corporate entities can be held liable for willful violations.

FinCEN Estimates.

The FinCEN estimates and assumptions below help illustrate the scope of the CTA compliance effort nationwide.¹

FinCEN estimates that 32,556,929 entities will submit initial BOI reports in Year 1 (2024).

FinCEN assumes that 59% of reporting companies will have a simple structure (i.e., 1 beneficial owner who is also the company applicant), 36.1% will have an intermediate structure (i.e., 4 beneficial owners and 1 company applicant), and 4.9% will have a complex structure (i.e., 8 beneficial owners and 2 company applicants). FinCEN estimates that filings for entities with complex structures could take nearly 11 hours.

How SMT Can Assist.

We are available to help you comply with the CTA, including with the determination of whether your company is an exempt entity, the identity of your beneficial owners and company applicants, and what information should be included in the initial BOI report, and with the preparation and filing of the initial BOI report. We are also available to help you with ongoing

¹ <https://www.federalregister.gov/d/2023-00703>

CTA compliance matters, including updated BOI reports, amendments to governing documents, and strategies to reduce your obligations under applicable privacy laws. We have been actively analyzing the CTA, including potential exemptions and other situations that will apply to a range of our clients, and assessing cost-effective compliance strategies for the initial filings, updated filings, and ongoing compliance obligations.

Please contact us as soon as possible to allow adequate time. Given the estimated volume of filings by FinCEN as described above, we anticipate this year-end to be exceptionally busy.

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