

Corporate Transparency Act (CTA) *Reference Guide*

On January 1, 2024, beneficial ownership information reporting requirements will take effect for legal entities created or registered to do business in the United States. The CTA reporting requirements will affect “tens of millions” of legal entities, according to official estimates from the U.S. Treasury Department’s Financial Crimes Enforcement Network (FinCEN). Businesses of all sizes will need to consider their reporting obligations.

Who must file beneficial ownership information reports (“BOI Reports”)?

- “**Reporting Companies**” are defined to mean virtually any legal entity created or registered to do business in the United States, including corporations, LLCs, various types of partnerships, and certain trusts. The statutory and regulatory definitions are intentionally broad.

What are the exemptions from these requirements?

- Under the CTA and FinCEN’s implementing rules, **23 exemptions exist** from the definition of “Reporting Company.” An entity that qualifies for any one of these exemptions need not file a BOI Report.
- Examples of exempt entities include:
 - Banks, bank holding companies, broker-dealers, exchanges, clearinghouses, and CFTC-registered entities
 - Issuers of securities registered under Exchange Act Section 12 or required to file information under Section 15(d)
 - Investment companies and registered investment advisers
 - Certain registered venture capital fund advisers
 - Insurance companies
 - Accounting firms
 - Certain pooled investment vehicles
 - Tax-exempt entities
 - “Large operating companies” with:
 - a physical office in the U.S.;
 - more than 20 full-time employees; and
 - annual gross revenues exceeding \$5MM

- Subsidiaries “controlled or wholly owned” by certain types of exempt entities
- “Inactive” entities

How is a BOI Report filed?

Through an electronic filing system available through FinCEN’s website. FinCEN cannot accept BOI reports before January 1, 2024. Starting on that day, the URL to file a report is: <https://www.fincen.gov/boi>

What information must a BOI Report include?

- Full legal name of entity and any “doing business as” (DBA) name;
- Street address for the entity’s principal place of business (domestic entities) or the primary U.S. location (foreign entities);
- State/territory of incorporation/formation or, for foreign entities, the U.S. jurisdiction where it first registered to do business;
- Internal Revenue Service (IRS) taxpayer identification number;
- For each “***Beneficial Owner***” and “***Company Applicant***”:
 - Full legal name
 - Date of birth
 - Street address (must be a residential address for Beneficial Owners)
 - A “unique identifying number” (valid passport/state ID/driver’s license)

Who is a Beneficial Owner?

An individual who, directly or indirectly:

- Owns or controls ***at least 25% of the ownership interests*** of such Reporting Company, regardless of the form such interests take (e.g., equity shares, a capital or profit interest, convertible instruments, options, etc.); or
- Exercises ***substantial control*** over the entity, including:
 - “Senior officers” (e.g., President, CEO, COO, CFO, General Counsel or individuals performing similar functions);
 - Individuals with the authority to appoint or remove senior officers or a majority of the directors (or similar body);
 - “Decision makers” (individuals who, for any reason, have the ability to direct, determine, or exercise substantial influence over important decisions of the entity); ***and***
- Any individual who has any other form of material control over the Reporting Company (e.g., general partners/managers or a VC investor capable of influencing important decisions)

Who is a Company Applicant*?

An individual who:

- “Directly files” the entity’s creation or registration document (must be identified by all Reporting Company that is required to report its Company Applicants); ***and***
- (if more than one individual is involved) Is “primarily responsible for directing or controlling” such filing.
 - Although the reporting requirements take effect on January 1, 2024, the deadline for filing an initial report varies, depending on when the entity was formed:
 - After filing an initial BOI report, a company must submit updated reports within ***30 days*** of any change in beneficial ownership.

****Note:*** Required ***only*** for reporting companies formed after January 1, 2024

When are BOI Reports Due?

- **Initial Reports**

<i>When Reporting Company formed:</i>	<i>When initial report is due:</i>
Before January 1, 2024	By January 1, 2025
During 2024	Within 90 days of formation
After January 1, 2025	Within 30 days of formation

- **Updates**

- After filing an initial BOI report, a company must submit updated reports within ***30 days*** of any change in beneficial ownership.

What are the penalties for failing to file?

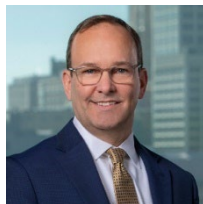
- Civil and criminal penalties attach to both reporting and use/disclosure violations. The civil penalty for willful noncompliance of beneficial ownership reporting requirements is a fine of \$500 per day, and criminal penalties include a fine up to \$10,000, imprisonment, or both.
- The CTA prohibits:
 - *Willful* provision of false or fraudulent beneficial ownership information or identifying documents or failure to report or update required information; and
 - *Knowing* unauthorized use or disclosure of beneficial ownership information obtained from FinCEN.
- While Reporting Companies are generally responsible for compliance under the CTA, individuals may be held liable for noncompliance.

- Under a safe harbor provision, an entity can avoid liability (absent evidence of intentional evasion of compliance) by correcting inaccurate information within 90 days of submission.

What should companies be doing now?

- Managers of legal entities organized or registered to do business in the United States should consider:
 - Evaluating every entity within the organizational structure to determine which may be a “Reporting Company” and whether an exemption may apply;
 - Identifying each “Beneficial Owner” for entities that are “Reporting Companies” and, for those organized after January 1, 2024, the “Company Applicant(s);”
 - Collecting required information for the BOI Report(s) and preparing to file in accordance with the applicable deadline;
 - Maintaining a tracking system for Beneficial Owners so that timely update filings can be made going forward.
- Legal professionals should consider not only reporting obligations that apply to their clients but also their own potential obligations as “Company Applicants.”

As indicated above, the CTA and its implementing regulations have created a number of new risks and responsibilities – we understand the difficulty in sorting through these new requirements, let alone complying with them. If you have any questions about them, or how GableGotwals may be able to help you, please let us know.



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