

The Corporate Transparency Act: Tasks to Address Before 2025

After years of uncertainty, the Corporate Transparency Act (the “CTA”) finally became effective on January 1, 2024. Officially enacted as part of the Anti-Money Laundering Act of 2020, the CTA was designed to combat financial criminals, money launderers, and other bad actors that may utilize “shell” companies to carry out illegal acts. To this end, the CTA requires certain individuals that own and/or operate an entity in the United States to file a Beneficial Ownership Information Report (“BOIR”) with the United States Financial Crimes Enforcement Network (“FinCEN”). In theory, these reports will help law enforcement agencies to look beyond complex entity structures and identify the individual bad actors that are using entities in the United States for illegal purposes. For more information on the CTA and its background, please see our [Client Alert from November 2, 2023](#).ⁱ

Despite the admirable goals underpinning the CTA, the BOIR reporting requirements have been likened to using a sledgehammer to kill an ant—they apply to millions of legitimate entities, require the disclosure of sensitive personal information, and the penalties for non-compliance can be harsh. As we celebrate the six-month anniversary of the CTA, it is important for businesses to be aware of approaching deadlines and to take care of BOIR filings before the end of the year. Accordingly, the remainder of this Article will provide practical guidance on the CTA’s requirements, and the applicable deadlines for BOIR filings.

1. Who Needs to File a BOIR?

Unless an exception applies, all “Reporting Companies” are required to file a BOIR with FinCEN. For purposes of the CTA, “Reporting Companies” include “corporations, limited liability companies, and any other entities created by the filing of a document with the secretary of state or any similar office in the United States.”ⁱⁱ In short, if an entity is created by filing a document with a secretary of state, it must file a BOIR unless an exception applies.

2. Who is Exempt from Filing a BOIR?

There are a total of 23 exemptions under which an entity may refrain from filing a BOIR.ⁱⁱⁱ Generally, exemptions are available to entities that are already subject to robust reporting requirements such as tax-exempt entities, publicly traded entities, banks, and insurance companies.

Additionally, there is an exemption for “large operating companies,” which are defined as entities that have (1) “more than 20 full-time employees in the United States;” (2) “filed a Federal income tax or information return in the United States in the previous year demonstrating more than \$5,000,000 in gross receipts or sales;” and (3) “an operating presence at a physical office in the United States.”^{iv}

3. When Must a BOIR be Filed?

Until the end of 2024, there are two different deadlines that apply to Reporting Companies:

For Reporting Companies created **BEFORE** January 1, 2024, the deadline for filing a BOIR is **December 31, 2024**. For those that fall into this category, now is the time to start preparing a BOIR filing or to confirm that an exemption is available!

For Reporting Companies created **ON OR AFTER** January 1, 2024, the deadline for filing a BOIR is **90 days after the entity is created**. Generally, an entity is “created” on the date that its registration paperwork is approved by an applicable secretary of state.

Beginning on January 1, 2025, new Reporting Companies will have **30 days after their creation** to file a BOIR.

4. Who are Beneficial Owners?

A BOIR must include information about both the Reporting Company and its “Beneficial Owners.” A “Beneficial Owner” is “an individual who either directly or indirectly: (1) exercises substantial control over a [R]eporting [C]ompany . . . or (2)

controls at least 25 percent of a [R]eporting [C]ompany's ownership interests.”^v Importantly, a Beneficial Owner **MUST** be a natural person.

For purposes of the CTA, a person exercises “substantial control” over a Reporting Company if that individual:

- (1) is a senior officer, such as a “president, chief financial officer, general counsel, chief executive officer, chief operating officer, or any other officer who performs a similar function;”
- (2) has “authority to appoint or remove certain officers or a majority of directors (or similar body)” of a Reporting Company;
- (3) is an “important decision-maker” for the Reporting Company; or
- (4) has “any other form of substantial control” over the Reporting Company.^{vi}

Unfortunately, other than individuals who own 25% or more of a Reporting Company's ownership interests, it can be difficult to determine who qualifies as a Beneficial Owner. Consequently, each Reporting Company and its personnel must be analyzed separately on this issue.

5. What Must be Included in a BOIR?

A BOIR must include:^{vii}

- Information about the Reporting Company, including the Reporting Company's:
 - Full legal name and any trade names or “dba” names;
 - Principal place of business;
 - State of formation; and
 - Taxpayer Identification Number.
- Information about each Beneficial Owner, including:
 - The individual's name, date of birth, and address; and
 - An identifying number from a passport or driver's license, and the name of the issuing jurisdiction of such number.

Additionally, for any Reporting Company formed on or after January 1, 2024, the same information that must be reported for Beneficial Owners must also be included for the Reporting Company's “**Company Applicant**,” which is defined as “the individual who directly files the document that creates or registers” the Reporting Company and “if more than one person is involved in the filing, the individual who is primarily responsible for directing or controlling the filing.”^{viii} Under this definition, Company Applicants can include accountants, attorneys, or other third parties. Importantly, there can be a maximum of two total Company Applicants.^{ix}

For reporting efficiency individuals can obtain a FinCEN Identification Number (“**FinCEN ID**”), which operates like a TSA Precheck Number. In other words, rather than re-submitting the sensitive personal information that is required for Beneficial Owners on multiple BOIRs, an individual can instead provide their FinCEN ID. Attorneys and other professionals that will frequently serve as Company Applicants will likely benefit from obtaining a FinCEN ID.

6. What are my Ongoing Compliance Obligations?

In addition to the initial filing requirements established by the CTA, Reporting Companies have an ongoing obligation to update their BOIRs. If there is a change in any of the information included on a BOIR, the Reporting Company must file an updated BOIR within **30 days** of the applicable change.

Ongoing compliance is an onerous requirement, and Reporting Companies must carefully monitor their Beneficial Owners to ensure that their BOIRs are up to date. For example, any of the following changes could trigger the need to file an updated BOIR:

- A Beneficial Owner moves and changes their primary address;
- The Reporting Company changes its principal place of business or obtains a new trade name;
- An equity owner acquires additional equity in a Reporting Company, bringing their total ownership interest to 25% or more for the first time; or

- A Beneficial Owner dies and transfers their ownership interest to an heir.

7. What are the Penalties for Failing to Comply with the CTA?

A violation of the CTA and the BOIR requirements can lead to both civil and criminal penalties. While civil penalties can amount to as much as \$500 for each day that the violation continues, criminal penalties (which can result if false or fraudulent information is willfully included in a BOIR) can lead to imprisonment for up to two years and/or a criminal fine of up to \$10,000.

Conclusion

The CTA's reporting requirements are admittedly onerous and frustrating. However, the CTA is here to stay, and it is essential for business owners and operators to comply with the BOIR requirements, including the deadlines mentioned in this Article. BBG is available to assist as you consider the CTA and its potential implications for you and your business!



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ⁱ Suzanne Wilson and Roni Vogt, *Just like the Ball in Times Square on New Year's Eve, the Corporate Transparency Act drops on January 1, 2024. Are you ready?*, BBG CONSTRUCTION LAW: CLIENT ADVISORIES (Nov. 2, 2023), <https://bbglaw.com/wp-content/uploads/2023/11/Client-Alert-CTA-October-2023-Final-Version-w-photos.pdf>.

ⁱⁱ Financial Crimes and Enforcement Network, *Beneficial Ownership Information: Frequently Asked Questions* pt. C.1, U.S. TREASURY (Sept. 18, 2023), <https://www.fincen.gov/boi-faqs>.

ⁱⁱⁱ *Id.* at pt. L.1.

^{iv} *Id.*

^v *Id.* at pt. D.1.

^{vi} *Id.*

^{vii} *Id.* at pt. F.2, F.3.

^{viii} *Id.* at pt. E.1.

^{ix} *Id.*