



Navigating the Corporate Transparency Act: Compliance Strategies and Impacts on Reporting Obligations

Dustin Lauermann, Daniel Sable,
and Raphael Rosenzweig

March 14, 2024

Seyfarth Shaw LLP

"Seyfarth" refers to Seyfarth Shaw LLP (an Illinois limited liability partnership).

©2024 Seyfarth Shaw LLP. All rights reserved. Private and Confidential



Legal Disclaimer

This presentation has been prepared by Seyfarth Shaw LLP for informational purposes only. The material discussed during this webinar should not be construed as legal advice or a legal opinion on any specific facts or circumstances. The content is intended for general information purposes only, and you are urged to consult a lawyer concerning your own situation and any specific legal questions you may have.

Speakers



Dustin Lauermann
Partner
Los Angeles



Daniel Sable
Partner
Los Angeles



Raphael Rosenzweig
Associate
Houston

Corporate Transparency Act Overview

**Who is
Impacted?**

Requirements

Timing

**Authorized
Disclosures**

Next Steps

What's the CTA?

- The Corporate Transparency Act of 2020 (the “CTA”) became effective January 1, 2024.
- The stated purpose of the CTA is to:

“protect the U.S. financial system from illicit use and impeding malign actors from abusing legal entities, like shell companies, to conceal proceeds of corrupt and criminal acts.”

- Simply put, the CTA seeks the disclosure of corporate ownership and the prevention of money laundering.

What does the CTA Require?

- Each Reporting Company must:
 - report specific beneficial ownership information (“BOI”) to FinCen;
 - disclose information about who created or registered it to do business in the United States; and
 - report any change to previously reported information within a specified time period.
- The CTA may apply to most, if not all, of your entities currently in existence and formed in the future and adds a new layer of regulatory compliance for entities.

Required Filings

	Existing Entities (as of December 31, 2023)	New Entities
Filing Deadline	December 31, 2024	90 days for entities formed <u>prior to</u> January 1, 2025 30 days for entities formed <u>on or after</u> January 1, 2025
“Company Applicant” Information		✓
“Beneficial Ownership” Information	✓	✓

- Filing system is online through FinCEN’s website (via a portal or by uploading a PDF).
- Any updates to the filing must be filed within 30 days after a change in reportable information

What is a Reporting Company?

Domestic	Foreign
An entity created by filing a document with a secretary of state or similar office under the laws of a U.S. state	An entity formed under the laws of a country other than a U.S. state, but which has registered to do business with a secretary of state or similar office under the laws of a U.S. state
This encompasses nearly all statutory entities* <ul style="list-style-type: none">• Corporations• Limited liability companies• Limited liability partnerships, limited partnerships, etc.	

*Sole proprietorships, general partnerships, and common law trusts are not covered.

Note: If the laws of the U.S. jurisdiction require a trust to file a document with the secretary of state or similar office to be created or registered, then it is a Reporting Company.

A Reporting Company does not need to file a BOI Report if an exemption applies.

FinCen estimates that there are more than 32 million entities that are subject to the reporting requirements.

Exemptions

There are **23** exemptions. In general, they include many entities that already are subject to substantial federal or state regulation under which beneficial ownership already may be known.

- For example, **regulated entities** that are exempt include: (i) entities that file reports with the SEC, (ii) government authorities, (iii) banks, (iv) credit unions, (v) money services businesses, (vi) investment advisors, (vii) securities brokers and dealers, (viii) tax exempt entities, (ix) entities assisting tax exempt entities, (x) insurance companies, (xi) state-licensed insurance producers, (xii) pooled investment vehicles, (xiii) public utilities. (xiv) inactive entities, (xv) accounting firms, and (xvii) large operating companies.
- A **large operating company** is an entity that (i) employs more than 20 full time employees in the US, (ii) has an operating presence at a physical office in the U.S., and (ii) has filed federal income tax or information return in the U.S. for the previous year demonstrating more than \$5 million in gross receipts or sales on IRS form 1120 or other applicable forms, excluding gross receipts or sales from sources outside the U.S.
- **Tax exempt entities.**
- Certain **subsidiaries of exempt entities.**
- If an entity loses an exemption, it has 30 days to make the required filing.
- See FinCen's Small Entity Compliance Guide, BOI Reporting Requirements for additional information regarding the exemptions.

Who is My Company Applicant?



- “Direct filer” – the individual who directly filed the formation or registration document with the secretary of state or similar office under the laws of a U.S. State
- AND
- The individual who “directed or controlled the filing action” (i.e., the individual who prepared the formation or registration document or who directed the direct filer to file the formation or registration document with the secretary of state or similar office under the laws of a U.S. State)
- There can be up to two Company Applicants on a given filing (but the person who filed the formation or registration document may also be the one who prepared it)

Note: Signing as an incorporator is not relevant to this determination.

Am I a Company Applicant?



MAYBE

- Did you file the document?
 - You are a Company Applicant.
- Did you prepare the document?
 - You may be a Company Applicant.
- Did you tell your paralegal to prepare the document?
 - You may be a Company Applicant.

Company Applicants: Required Information

Company Applicants are required to provide their:

- 1** Full legal name
- 2** Date of birth
- 3** Current address
- 4** A unique identification number assigned by an issuing jurisdiction (e.g., current passport or driver's license), plus a copy of the document from which the ID number was taken

Company Applicant: Personal Information



- The personal information of the Company Applicant must be included in each applicable filing.
- However, the Company Applicant can instead provide the information to FinCen and obtain a FinCen ID number. Instead of disclosing the personal information each time, the Company Applicant would merely have to provide its FinCen ID number to the Reporting Company.
- We recommend all individuals who will be reportable in BOI filings obtain a FinCen ID number.

Required BOI

The BOI information that is required is:

As to the Company:

1. Full legal name
2. Any trade name or d/b/a
3. Current address in the U.S.
4. State, tribal or foreign jurisdiction of formation
5. Taxpayer Identification Number (including the EIN)

As to the Beneficial Owners:

1. Full legal name
2. Date of birth
3. Current residential address
4. Unique identification number and issuing jurisdiction (e.g., current passport or driver's license), plus a image of the document from which the ID number was taken)

Beneficial Owners

Beneficial Owners are those that:

- Exercise substantial control (including negative control) over the entity (serves as a senior officer, appoints or removes senior officers or makes/approves major decisions for the entity); or
- Own 25% or more of the entity (this includes convertible notes, warrants, options and similar instruments, whether or not exercised).
- This applies to domestic and foreign entities.

“

***I'm giving the government all this
personal information. Will it be safe?
Who can access it?***

”

Who can access beneficial owner information?

FinCen will permit the following to obtain BOI for authorized activities related to national security, intelligence, and law enforcement:

- Federal, state, local, and Tribal officials
- Certain foreign officials who submit a request through a U.S. federal government agency

Financial institutions will have access to BOI information in certain circumstances, with the consent of the Reporting Company.

Financial institutions' regulators will also have access to BOI information when they supervise those financial institutions.

****BOI reported to FinCen will be stored in a secure, non-public database using rigorous information security methods and controls typically used in the federal government to protect non-classified yet sensitive information systems at the highest security level.****

Criminal Penalties

There are both civil and criminal penalties for willful failure to report or willfully providing false or fraudulent BOI:

- Civil Penalties are \$591 per day (up from \$500 as of January 25, 2024) for a continuing violation, up to a maximum of \$10,000.00.
- Criminal penalties are up to 2 years in jail.

What to Do



1. Identify individuals to monitor CTA regulations and notify company management of any relevant changes.
2. Adopt company policy regarding CTA compliance.
3. Develop CTA-related training, as needed.
4. Review company's org chart, ownership and other records to ensure they are up to date.
5. Determine whether the company is a "Reporting Company" under the CTA.
6. Determine if any exemptions apply, and memorialize applicable exemption analysis.

What to Do



7. Collect reporting information on each Reporting Company.
8. Identify all reportable beneficial owners and control persons for each Reporting Company.
9. Collect reporting information on beneficial owners or obtain FinCEN Identifier number for each reportable beneficial owner and control person.
10. Identify Company Applicants for each Reporting Company formed in 2024 or later (maximum of Company Applicants per Reporting Company).
11. Collect reporting information on Company Applicants for each Reporting Company formed in 2024 or later or obtain FinCEN ID numbers for Company Applicants.
12. Request all reportable beneficial owners (including control persons) and Company Applicants obtain FinCEN ID numbers.

What to Do



13. Determine when to file BOI Report:

- a) If the Reporting Company was created or becomes a Reporting Company before January 1, 2024, no later than January 1, 2025.
- b) If the Reporting Company was created or registered on or after January 1, 2024, file an initial BOI Report within either 90 days (for a Reporting Company created or registered in 2024) or 30 days (for a Reporting Company created or registered on or after January 1, 2025) of the earlier of the date on which: (1) the Reporting Company receives notice the formation of the company has become effective; or (2) the secretary of state provides public notice the Reporting Company has been created or registered to do business.

14. Prepare BOI Report as needed for each Reporting Company and file at FinCEN portal.

What to Do



15. Implement a compliance process to monitor and report any changes or inaccuracies in BOI Reports.
16. File updates if any information about the Reporting Company or beneficial owners and control persons changes after the initial BOI Report is filed.
17. File a corrected BOI Report if the company discovers an inaccurate BOI Report was filed by a Reporting Company.
18. If an exemption applies, continue to monitor that such exemption continues to apply. Any Reporting Company that stops qualifying for an exemption must file a BOI Report within 30 calendar days after the date the exemption no longer applies.
19. A Reporting Company that becomes exempt, must update its BOI Report within 30 calendar days of the date it meets the exemption criteria.

Other Best Practices

Data Security

- Develop a secure process for collecting and storing personal information of beneficial owners and Company Applicants as applicable.
- Review applicable privacy policies to confirm whether disclosure to comply with law is permitted.
- Amend policies as necessary.

General Company Practices

- Review company documents for appropriate CTA-related provisions.
- Review and consider whether other company documents should include appropriate CTA related provisions (ex. Shareholders' Agreement, Subscription Agreements, Investor Questionnaire, LLC Agreement, convertible notes, warrants, options, etc.).
- Employment Agreements (executive level).
- Director and Officer Agreements (Indemnification Agreements).
- Make sure you get Company Applicant FinCen IDs when forming new entities.
- Dissolve inactive entities.

“

I heard the CTA was recently declared unconstitutional, so I don't think our company needs to comply.

”

National Small Business United

***v.
Yellen***



On March 1, 2024, a federal judge on the United States District Court for the Northern District of Alabama declared that the Corporate Transparency Act is unconstitutional.

- FinCen has announced that it will comply with the Court's order as long as it remains in effect and the government is not currently enforcing the CTA against the plaintiffs in the case (including members of the National Small Business Association).
- It is likely that either
 - the decision will be appealed by the government and that pending the appeal the decision will be stayed; or
 - FinCen will propose amendments to the CTA, which if adopted will address and seek to cure the constitutional issues.

So What Do We Do?



- Entities that were in existence on January 1, 2024 and therefore not required to file a beneficial ownership report until the end of this year
 - Continue to gather information required to be disclosed, but delay the filing of the report until later this year when hopefully more information will be available on the effect of the decision.
- Entities formed this year (REMEMBER: they have 90 days from the date of formation to file their beneficial ownership report)
 - Continue to gather information required to be disclosed but delay the filing of the report until the end of the applicable 90 day or if earlier, until further clarifying information is available.
- With respect to entities that are members of the National Small Business Association, regardless of when formed
 - FinCEN's initial response, like many aspects of the CTA, is less than entirely clear and does not offer specific guidance as to whether or when in the future it will seek to enforce the CTA. Therefore, despite FinCEN's announcement that it is not currently enforcing the CTA, the best practice would be to follow recommendation 1 or 2 above, as applicable

Additional CTA Resources

FinCEN Website

- FinCen Beneficial Ownership Information Reporting Frequently Asked Questions
 - <https://www.fincen.gov/boi-faqs>
- Small Entity Compliance Guide – BOI Reporting Requirements
 - https://www.fincen.gov/sites/default/files/shared/BOI_Small_Compliance_Guide.v1.1-FINAL.pdf

Seyfarth Resources

- <https://www.seyfarth.com/trends/corporate-transparency-act.html>
- CTA BOI E-Filing System Demo: [CTA BOI E-Filing System Demo \(youtube.com\)](#)

Questions?



Thank You

For more information, please
contact

dlauermann@seyfarth.com

dsable@seyfarth.com

rrosenzweig@seyfarth.com