

CORPORATE TRANSPARENCY ACT: FINCEN UPDATES AND GUIDANCE AHEAD OF JANUARY 1, 2024 EFFECTIVE DATE

Hodgson Russ Corporate & Securities Alert
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Background

What is the Corporate Transparency Act?

- Effective on January 1, 2024, the Corporate Transparency Act (the CTA) will require existing and newly formed entities operating in the United States to report personal information about their Beneficial Owners, and Company Applicants for newly formed entities, to the Department of Treasury's Financial Crimes Enforcement Network (FinCEN) unless exempt.
- The purpose of the CTA is to help prevent the use of shell companies for illicit activities including money laundering and the financing of terrorism.
- Domestic and foreign entities formed or operating in the U.S. that do not qualify for one of the 23 exemptions under the CTA (Reporting Companies) are required to submit Beneficial Ownership Information (BOI) to FinCEN through its non-public Beneficial Ownership Secure System (BOSS).
 - Entities formed or registered before January 1, 2024 will have until January 1, 2025 to file their initial BOI reports with FinCEN.
 - Entities formed or registered in 2024 will have 90 calendar days from the date of formation or registration to file an initial BOI report.
 - Entities formed or registered on or after January 1, 2025 will have 30 calendar days to file their initial BOI reports.

Which companies will be required to report?

- Reporting Companies include all corporations, limited liability companies (LLCs), and other entities formed by filing a document with a secretary of state or similar office under the law of a U.S. state or Indian Tribe, or formed in a foreign country and registered to do business in the U.S.
- Reporting Companies formed on or after January 1, 2024 will also have to provide reports including personal information about a maximum of two Company Applicants, (1) the person who directly files the formation documents for the Reporting Company, and (2) the person who directed the filing of the formation

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documents. Entities formed prior to January 1, 2024 will not need to report personal information for their Company Applicants.

- If a company falls within one of the CTA's 23 exemptions, it will not need to make a BOI filing to FinCEN.
- If a Reporting Company that previously filed a BOI report later qualifies for an exemption under the CTA, an updated report identifying the newly applicable exemption is required.
- If at any point in time an exemption for BOI reporting is no longer applicable to an entity, the entity becomes a Reporting Company and must file a BOI report within 30 days of losing the exemption.

Who is a Beneficial Owner?

- An individual qualifies as a Beneficial Owner either by (1) exercising substantial control over a Reporting Company, or (2) by owning or controlling at least 25 percent of the ownership interests of a Reporting Company.^[i]

What are the penalties for noncompliance with the CTA?

- Any Reporting Company that does not comply with the CTA reporting requirements, fails to amend reports including incorrect information within 30 days of becoming aware of such inaccuracy or willfully files false information will face potential civil and criminal penalties of \$500 per day up to \$10,000 and two years' imprisonment.

FinCEN Updates

FinCEN recently published several updates and informational resources in advance of the CTA's January 1, 2024 effective date. The following updates provide information to keep you informed and current with the upcoming CTA reporting requirements.

1. Small Entity Compliance Guide

Originally issued in September 2023, and most recently updated on December 1, 2023, FinCEN published the Small Entity Compliance Guide to Beneficial Ownership Information Reporting Requirements under the CTA.^[ii] The Guide addresses various questions about CTA compliance including:

- Does my company have to report its Beneficial Owners?
- Who is a Beneficial Owner of my company?
- Does my company have to report its Company Applicants?
- What specific information does my company need to report?
- When and how should my company file its initial BOI report?
- What if there are changes to or inaccuracies in reported information?

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This publication provides step-by-step guidance to aid in determining reporting obligations and identifying what information is required to be reported for compliance with the CTA.

2. Finalized FinCEN Identifier Rules

On November 8, 2023, FinCEN issued a final rule specifying when a Reporting Company may report another entity's FinCEN Identifier in lieu of information about individual Beneficial Owners.[iii]

What is a FinCEN Identifier?

- A FinCEN Identifier is a unique number that FinCEN will issue to individuals who have provided FinCEN with their BOI (individual FinCEN Identifiers) and to Reporting Companies that have filed initial BOI reports (entity FinCEN Identifiers).

How can an individual obtain a FinCEN Identifier?

- Beginning January 1, 2024, individuals will be able to request a FinCEN Identifier by completing an electronic web form. The form requires the individual to provide personal information including their full legal name, date of birth, address, unique identifying number and issuing jurisdiction from an acceptable identification document, and an image of the identification document.

How can an entity obtain a FinCEN Identifier?

- A Reporting Company may request a FinCEN Identifier by checking the appropriate box on the BOI reporting form and submitting the report.

What does the final rule do?

- The final rule provides criteria that must be met for a Reporting Company to report another entity's FinCEN Identifier rather than information about individual Beneficial Owners.

When can a Reporting Company use an Entity FinCEN Identifier?

- A Reporting Company may report another entity's FinCEN Identifier in lieu of information about the Reporting Company's individual Beneficial Owner if:
 - (1) The other entity obtained a FinCEN Identifier and provided it to the Reporting Company
 - (2) The individual is or may be a Beneficial Owner of the Reporting Company through the individual's ownership interest in the other entity and
 - (3) The other entity and the Reporting Company share the same individual Beneficial Owners.[iv]

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3. Updated FAQs

On December 1, 2023, FinCEN released updated BOI FAQs, including new questions and explanations of the reporting process, Reporting Companies, Beneficial Owners, Company Applicants, reporting requirements, initial reports, and Reporting Company exemptions.[v]

Additional Thoughts

While FinCEN has yet to finalize certain aspects of the CTA process, the CTA's Beneficial Ownership Information reporting requirements are nevertheless expected to go into effect on January 1, 2024. Business owners and managers should begin analyzing whether their companies are Reporting Companies, and if so, identify the Beneficial Owners and any other information necessary to file a BOI report for those Reporting Companies. Business owners and managers should also be aware that some states, including New York, Massachusetts and California, are considering adopting state-level transparency laws that would require similar Beneficial Owner reporting obligations and may, in some cases, include a publicly accessible database.

Hodgson Russ welcomes the opportunity to assist you in complying with these new requirements under the CTA. Please contact one of our [Corporate & Securities](#) attorneys or email us at CTAAdvisor@hodgsonruss.com with any questions about the CTA and its potential impact on your company.

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[i] For more information, see our previous client alert, "Reporting Requirements Under the Corporate Transparency Act: How Does it Affect My Company?" available at <https://www.hodgsonruss.com/newsroom-publications-14097.html>

[ii] FinCEN, Small Entity Compliance Guide: Beneficial Ownership Information Reporting Requirements (December 2023), available at https://www.fincen.gov/sites/default/files/shared/BOI_Small_Compliance_Guide.v1.1-FINAL.pdf

[iii] FinCEN's final rule regarding the use of entity FinCEN Identifiers can be found here: <https://www.govinfo.gov/content/pkg/FR-2023-11-08/pdf/2023-24559.pdf>

[iv] For more information on the circumstances under which a Reporting Company may use a FinCEN Identifier, see here: <https://www.govinfo.gov/content/pkg/FR-2023-11-08/pdf/2023-24559.pdf>

[v] The updated FAQs can be found here: <https://www.fincen.gov/boi-faqs>