



Preparing for Compliance with the Corporate Transparency Act

Federal filings involved with maintaining business entities have generally been limited to tax-related filings to the IRS. On January 1, 2024, this will change for most small businesses, when requirements of the Corporate Transparency Act (CTA) to report to the U.S. Treasury Financial Crimes Enforcement Network (FinCEN) go into effect.

As discussed in [previous Andrews Myers Law Alerts](#), entities will have to file initial reports (BOI Report) with FinCEN disclosing information regarding their beneficial owners. They will then have continuing obligations to update that information as it changes. Stiff fines and possible jail time await those who fail to comply with the CTA.

If your organization has ever responded to “Know Your Customer” information requests from a lender, then you are generally familiar with the information that must be included in a BOI Report. The information required in an entity’s initial BOI Report is:

- (1) the name and formation jurisdiction, trade names (if any), address, and taxpayer identification number of the entity, and
- (2) full legal names, dates of birth, addresses, current passport or driver’s license identification numbers, and image of the passport or driver’s license for each of the entity’s beneficial owners and company applicants.

Entities formed prior to January 1, 2024 will have until January 1, 2025 to file initial BOI Reports. Entities formed during 2024 will have ninety days from formation to file their initial BOI Reports. Going forward, all entities formed after 2024 will have thirty days to file their initial BOI Reports.

Entities that have filed BOI Reports will have a continuing obligation to correct errors and file updates within thirty days of discovering the error or making the change. For example, if an entity moves addresses or the legal name or address of a beneficial owner changes, that information must be updated. In a given year, this could possibly occur many times or not at all.

The application of CTA requirements is sweeping and carries the potential for significant liability exposure, preparing for compliance should begin now (if it has not already). Reviewing your organizational structure, compiling the information that must be reported, and adopting compliance processes that work for your organization and are supported in its governing documents are steps that can be taken now, to position your organization for compliance with the CTA once it becomes effective.

Review your Organization's Structure

Start by compiling a list of entities that your organization has formed. Your organization's counsel and CPA may be able to assist with organizing this effort, as well as with review to determine whether any of the entities qualify for one of the 23 available exemptions from reporting requirements. Specialized counsel may be necessary, depending upon the complexity of the structure.

Most for-profit businesses related to the construction and real estate industries will not be exempt from reporting requirements unless they are "inactive" entities or a "large operating company" or its wholly owned subsidiary.

Generally, only entities formed before January 1, 2020, that do not own any assets and have taken no actions in the previous 12 months could be "inactive." An entity formed on or after January 1, 2020, is not an "inactive" entity, even if it no longer operates.

Only entities with more than 20 full-time employees that own or lease U.S. offices and filed tax returns showing gross revenues of more than \$5,000,000 in the previous year would be "large operating entities. If exemptions do apply to an entity, they may apply to its wholly-owned subsidiaries, as well.

Of note, entities that were exempt but no longer qualify for an exemption, and vice versa, are required to report within 30 days of the change in status. For example, if a previously exempt large operating company lost its 20th employee or its tax return for the previous year showed \$4,999,999.99 in gross receipts or sales, that entity is required to submit a BOI Report. Newly exempt entities that previously reported are required to report the change (rather than simply abandoning reporting) within thirty (30) days.

Gather Information

For all entities in your organization that are not exempt from filing BOI Reports, prepare lists of current beneficial owners and company applicants for each entity.

An entity's "Beneficial Owners" include each individual who, directly or indirectly, owns or controls an ownership interest of 25% or more of the entity or has "substantial control" over the entity. People with substantial control include managing members, general partners, managers, and directors, as well as "senior officers" including an entity's president, c-suite officers, and any other officers with the same level of control, regardless of title.

The company applicants of an entity are the person who directly filed the entity's formation documents and the person who directed the filer to do so. Entities formed prior to January 1, 2024, will not have to include a company applicant in their BOI Reports. Also, once reported, information regarding the entity's company's applicants does not have to be updated.

Contact those who qualify as beneficial owners or company applicants and ask for the information needed from them for the BOI Report. Be sure to remind those people to alert you when any of the information they provide changes. If you are creating an entity, gather this

information prior to filing with the Secretary of State to ensure that you can timely submit the BOI Report.

Adopt a Compliance Procedure

Those who are aware of reportable changes must know to inform those who are responsible for reporting. Those who are responsible for reporting must know when and how to report. All must understand the basic mechanics of the information that has to be reported and the short timeframes for reporting updates and corrections.

This requires education and commitment by team members on at least three levels to communicate with each other, regularly, regarding BOI Report data:

1. Designated BOI Report compliance representative(s)
2. Decision Makers
3. Beneficial Owners

Your organization should designate one or more principals to oversee the gathering and maintenance of the information required for BOI Report compliance. Consider having that person conduct semi-monthly or monthly checks to ensure information in your entity's BOI Report is up to date, and as a reminder regarding where to route reportable information. This officer should also be responsible for completing the filing update.

Your organization's decision-makers are likely the first to be aware of reportable changes, such as office moves, elections of new managers, officers, or directors, the addition or removal of members, shareholders, or partners of the entity, transfers of equity in the entity, and the filing of assumed names (DBAs). Changes affecting an entity may occur within a parent company several layers removed from a particular reporting entity, and there must be a commitment by decision-makers to apprise each affected entity's BOI Report compliance officer.

Reporting a change in legal name and address for CTA compliance purposes may not otherwise be at the forefront of a newly married beneficial owner, for example.

Review Governing Documents

In addition to the entity, the designated compliance representative and senior management have some potential exposure to liability under the CTA if compliance is not maintained. The application and limitations of coverage under a typical D&O policy in the specific context of BOI Reports have not yet been tested. However, specifically adding CTA compliance to the role of a particular officer or governing person may increase potential availability. This should be discussed with your organization's insurance consultant, and any appropriate changes to descriptions of officer duties in each reporting entity's governing documents should be adopted.

Given the potential liability, consider amending governing documents to require investors and principals who are, or ever become, "beneficial owners" to timely provide all necessary information for the entity's BOI Reports. Adding consequences for not doing so should be considered. There is only a limited mechanism for reporting that information regarding a

beneficial owner is unknown at the time of the BOI Report, and it will not be considered complete or compliant until that information is provided.

In lieu of the specific pieces of information regarding a person who is a beneficial owner or company applicant, a reporting entity can furnish that person's "FinCEN Identifier" if they have obtained one. Individuals who have FinCEN Identifiers are responsible for timely reporting corrections and updates to the information associated with the Identifier, seemingly shifting the burden to update from the entity to the individual.

When the process to obtain FinCEN Identifiers becomes active, consider requiring substantial investors, officers, and senior management to obtain FinCEN Identifiers and report as required. Entities can also request FinCEN identifiers when filing their initial reports, although the potential for use to streamline filings for affiliated entities is not yet clear.

FinCEN has already adopted various changes and official clarifications to reporting requirements since the publication of its "Final Rule" on BOI Reports on September 30, 2022. Filing forms and the electronic filing system are still works in progress, and aspects of CTA procedures will likely change over time. However, these obligations are coming, and entities will have to be deliberate in providing for and maintaining compliance with BOI Reports. This will require clear lines of communication and a commitment to share information among all those affiliated.

Helpful Resources covering the CTA:

[CTA Full Text](#)

[FinCEN Small Entity Compliance Guide](#)

For more information, please contact [Susan George](#) and [Andrew Kidda](#).