



**Lipsitz Green
Scime Cambria** LLP
ATTORNEYS AT LAW



**MICHAEL
SCHIAVONE**

716 844 3500
mschiavone@lglaw.com



**MATTHEW B.
MOREY**

716 849 1333, ext. 509
mmorey@lglaw.com



**JAIME
MICHELLE CAIN**

716 849 1333, ext. 463
jcain@lglaw.com



**AMY J.
VIGNERON**

716 849 1333, ext. 319
avigneron@lglaw.com



**WILLIAM J.
JUSTYK**

716 849 1333, ext. 483
wjustyk@lglaw.com



**ALEXANDER R.
DIDONATO**

716 849 1333, ext. 485
adidonato@lglaw.com

BUSINESS & CORPORATE LAW ALERT REGARDING

CORPORATE TRANSPARENCY ACT

Updated Guidance on Requirements and Obligations for Business Owners Under the Corporate Transparency Act

As of January 1, 2024, domestic and foreign businesses must comply with new federal regulations under the Corporate Transparency Act (the “CTA”). These new CTA rules require that business entities file Beneficial Owner Information reports that include the details as to their “beneficial owners” to the Financial Crimes Enforcement Network (“FinCEN”).

Throughout 2024, FinCEN has periodically provided updated guidance and clarification on how businesses can ensure they are in compliance with the CTA. This guidance is provided in the form of a comprehensive [Frequently Asked Questions document](#), which was last updated by FinCEN in July 2024.

WHAT YOU NEED TO KNOW.

The primary obligation placed on businesses who must comply with the CTA, is the filing of a **Beneficial Owner Information (BOI)** report with the FinCEN. In this alert, we will review the essential elements of the regulations and guidance issued by FinCEN, including:

- Does your business have to comply with the CTA?
- What steps does your business need to take to comply with the CTA?
- How does your business file a Beneficial Owner Information (BOI) report?
- How do you ensure your business is in compliance with the CTA?

WHAT IS THE PENALTY FOR FAILING TO COMPLY WITH THE CTA?

The FinCEN CTA requirements impose **serious penalties for noncompliance**.

According to FinCEN, “the willful failure to report complete or updated beneficial ownership information to FinCEN, or the willful provision of or attempt to provide false or fraudulent beneficial ownership information may result in a civil or criminal penalties, including civil penalties of up to **\$500 for each day that the violation continues**, or criminal penalties including **imprisonment for up to two years and/or a fine of up to \$10,000.**”

These penalties add up daily, and can result in jailtime, but it is important to understand that compliance is not difficult as long as you understand the basics. We will cover this more below, but to avoid penalties, you should make sure that (1) your initial BOI report is timely submitted, (2) any updates to beneficial owners, ownership, or changes in control of a reporting company are reported to FinCEN with an updated report, and (3) you and your business associates all understand these requirements. An easy way to get jammed up with compliance is with changes in reporting company ownership that are not reported to FinCEN.

IS MY BUSINESS REQUIRED TO COMPLY WITH THE CTA?

Reporting Companies

According to FinCEN, any business that qualifies as a “**reporting company**” must comply with the CTA. The criteria for domestic and foreign entities to qualify as a reporting company, is as follows.

Domestic businesses that meet any of the following criteria, qualify as a **reporting company**:

- The company is a Corporation;
- The company is a Limited Liability Company (LLC); or
- The company was created by the filing of a document with a secretary of state or any similar office under the law of a State or Indian tribe.

A foreign entity qualifies as a **reporting company** if:

- The company as registered to do business in a U.S. State or Tribal jurisdiction by filing a document with a secretary of state or similar office of the State or Tribe.

Exceptions

FinCEN's criteria for qualifying as a reporting company is rather broad. However, there are exceptions that exempt certain businesses from having to comply with the CTA.

Any of the following twenty-three types of business entities are considered to be an **exception** and not subject to the rules of a reporting company:

- | | |
|---|--|
| 1. Securities reporting issuer | 2. Governmental authority |
| 3. Bank | 4. Credit union |
| 5. Depository institution holding company | 6. Money services business |
| 7. Broker or dealer in securities | 8. Securities exchange or clearing agency |
| 9. Other Exchange Act registered entity | 10. Investment company or investment adviser |
| 11. Venture capital fund adviser | 12. Insurance company |
| 13. State-licensed insurance producer | 14. Commodity Exchange Act registered entity |
| 15. Accounting firm | 16. Public utility |
| 17. Financial market utility | 18. Pooled investment vehicle |
| 19. Tax-exempt entity | 20. Entity assisting a tax-exempt entity |
| 21. Large operating company | 22. Subsidiary of certain exempt entities |
| 23. Inactive entity | |

The “Large operating company” exception, which has the potential to except a number of companies from CTA requirements, refers to any company that (1) has at least 20 full-time employees located in the United States, (2) has a physical office and operating presence in the United States, and (3) filed a Federal income tax or information return in the United States demonstrating more than \$5 million in gross receipts or sales (return filed for prior tax year). If a company qualifies as a large operating company, it is exempt from BOI requirements, however, **keep in mind that if at any time a company that is a large operating company no longer complies with any of the criteria, a BOI report must be filed within thirty (30) days of such non-compliance.**

Since the penalties and fines for failure to comply with the CTA are serious, it is important to confirm any suspected exception before assuming that your company is meets the criteria of an exempt entity.

WHAT IS A BENEFICIAL OWNER?

The CTA requires reporting companies to identify and report detailed information on their “**beneficial owners.**”

The CTA defines “**beneficial owners**” as “**any individual who, directly or indirectly, either exercises substantial control over such reporting company or owns or controls at least 25 percent of the ownership interests of such reporting company.**”

An individual is deemed to “**exercise substantial control**” over a reporting company if they:

- serve as a senior officer;
- have authority over the appointment or removal of senior officers or a majority of the board;
- have substantial influence over important decisions; or
- have any other form of substantial control over the reporting company.

It is important to understand that even individuals that do not own a reporting company may be roped into the CTA’s definition of beneficial owner. For example, if a Special Director or Independent Manager is put in place as a requirement in connection with certain loan transactions, this Special Director or Independent Manager may be considered a “beneficial owner” for purposes of the CTA regardless of whether they have any true ownership of the reporting company. If you are not clear on which individual(s) in your business qualify as “beneficial owners” based on the CTA’s requirements, it is best to consult legal counsel and accounting professionals for guidance.

WHAT INFORMATION MUST BE INCLUDED IN A BOI REPORT?

To comply with the CTA, businesses that qualify as a reporting company must file a **Beneficial Owner Information (BOI) report**.

There are three categories of information that have to be provided in a BOI report:

1. Reporting Company information;
2. Beneficial Owners information; and
3. Company Applicant information.

Information that has to be filed for the **Reporting Company** includes:

- Legal Name
- Trade Name
- Address
- Jurisdiction
- Taxpayer Identification Number (including an Employer Identification Number)

Information that has to be filed for **Beneficial Owners** and the **Company Applicant** includes:

- Name
- Date of Birth
- Address
- Unique identifying number and photo from one the following (U.S. passport, State driver’s License, other identification document issued by a state, local government, or tribe)

It is important to understand that the BOI report involves submitting information about (i) the reporting company itself, (ii) the beneficial owners, and (iii) the company applicant. The company applicant is the individual who directed the filing of the document that gave rise to the organization of the reporting company. For example, if you hire an attorney to form a limited liability company on your behalf, the company applicant is the attorney who filed the organizational document with the appropriate secretary of state.

As you can see above, the information required in a BOI report is highly personal, especially with the requirement that a copy of a government issued identification document be submitted for each beneficial owner and company applicant. Obviously, many people want to avoid the hassle of sharing this information and providing scanned copies of government issued identification. For this reason, FinCEN provides an option to obtain what is referred to as a FinCEN Identification Number. To summarize, a beneficial owner or company applicant can go to the FinCEN submission portal, upload their required information to FinCEN, and FinCEN will provide a FinCEN ID number which allows an individual to input this ID number when filing BOI reports **instead of uploading all the identifiable information**

for every individual BOI report. This can be extremely helpful for company applicants and beneficial owners that deal with multiple companies, and as we'll cover below, filing required updated BOI reports.

As of now, the process for obtaining a FinCEN ID number is free and requires a Login.gov account. You can sign up for a Login.gov account here: https://secure.login.gov/sign_up/enter_email

HOW IS A BOI REPORT FILED?

BOI reports are to be filed online using the FinCEN Beneficial Owner Information Report online submission portal found at the following web address: <https://boiefiling.fincen.gov/>

There are options to download a PDF version of the BOI submission application, **keep in mind that if the BOI report is not filed online, it likely won't be received by FinCEN or considered filed, we advise using the online submission portal.**

When commencing the BOI report submission process, you will see the following prompt under the reporting company tab:

Filing Information

1. *Type of filing:

- a. Initial report ☐
- b. Correct prior report ☐
- c. Update prior report ☐
- d. Newly exempt entity ☐

Reporting Company information associated with most recent report, if any:

- e. Legal name
- f. Tax Identification type
- g. Tax Identification number
- h. Country/Jurisdiction (if foreign tax ID only)

2. Date prepared (auto-filled when form is finalized)

Please note that if you are filing an initial BOI report, you will check the "Initial report" box. If there is a change of company ownership, or change in control with respect to beneficial owners, "Update prior report" can be selected to submit the updated BOI report information. The "Correct prior report" option is available to correct mistakes concerning previously submitted BOI reports. The informational requests are straightforward fill in the blanks. Please keep in mind that for reporting company information, the reporting company address should be used, and for beneficial owner information, a personal address should be used.

Under the company applicant tab, as mentioned above, if the company applicant has a FinCEN ID, that number can be put in the appropriate box and the personal information requested will be registered in the FinCEN system automatically:

Part II. Company Applicant Information

1 of 1



Company Applicant FinCEN ID:

18. FinCEN ID

Full legal name and date of birth:

19. * Individual's last name

20. * First name

21. Middle name

22. Suffix

The same goes for beneficial owners:

Part III. Beneficial Owner Information

1 of 1



35. Parent/Guardian information instead of minor child ☐ (check if the Beneficial Owner is a minor child and the parent/guardian information is provided instead)

Beneficial Owner FinCEN ID:

36. FinCEN ID

Exempt entity:

37. Exempt entity ☐

Full legal name and date of birth:

38. * Individual's last name or entity's legal name.

39. * First name

WHAT IS THE DEADLINE TO REPORT INFORMATION?

The deadline for reporting companies to file an initial BOI report is dependent on the date the business was created. The following grid summarizes the BOI reporting deadlines, based on a business's date of creation.

BUSINESS START DATE	DEADLINE TO COMPLY WITH CTA
Created or registered to do business in US before January 1, 2024	BOI report due by January 1, 2025 Keep in mind that these companies do not need to report company applicant information
Created or registered to do business in US on or after January 1, 2024 and before January 1, 2025	BOI report due within 90 calendar days after reciting actual or public notice that company's creation or registration is effective, As a rule of thumb, the report should be submitted within 90 days after the company's formation document is filed and processed by the appropriate state authority
Created or registered to do business in US on or after January 1, 2025	BOI report due 30 calendar days after reciting actual or public notice that company's creation or registration is effective

HOW OFTEN MUST BOI BE REPORTED?

A reporting company is obligated to file a new BOI report when there is any change to the information initially filed.

THIS MEANS THAT ANY CHANGE IN OWNERSHIP, CHANGE IN CONTROL, OR CHANGE IN BENEFICIAL OWNERS MUST BE REPORTED TO FINCEN.

The deadline to file an updated BOI report is within 30 days of when changes are made.

If there is a change in those who qualify as "beneficial owner", if there is any change to the information initially reported regarding a reporting company, beneficial owner, or company applicant; a new Updated BOI report must be filed with updated information.

WILL THE INFORMATION IN A BOI REPORT BE MADE PUBLIC?

Critics of the CTA are concerned that BOI reporting may create privacy issues. In response, FinCEN has established an “**Access Rule**” to implement access and safeguard provisions for BOI filed in accordance with the CTA.

The CTA establishes that BOI is confidential and may not be disclosed except as authorized under the CTA and the Access Rule. FinCEN is authorized to disclose BOI under specific circumstances to six categories of recipients:

1. U.S. Federal agencies engaged in national security, intelligence, or law enforcement activity;
2. U.S. State, local, and Tribal law enforcement agencies;
3. foreign law enforcement agencies, judges, prosecutors, central authorities, and competent authorities (foreign requesters);
4. financial institutions using BOI to facilitate compliance with customer due diligence (CDD) requirements under applicable law;
5. Federal functional regulators and other appropriate regulatory agencies acting in a supervisory capacity assessing financial institutions for compliance with CDD requirements under applicable law; and
6. Treasury officers and employees.

Each category of authorized user is subject to specific security and confidentiality requirements to protect the security and confidentiality of BOI.

HOW CAN I ENSURE MY BUSINESS IS IN COMPLIANCE WITH THE CTA?

Despite the fact that this CTA requirement is so new, and there are still situations that appear unaddressed by FinCEN, there is guidance provided by FinCEN that can make complying with the CTA a manageable process. Given the seriousness of the penalties for noncompliance, it is of utmost importance to make sure that your companies comply with the CTA. Please keep in mind that organizations that have a large number of reporting companies should begin submitting BOI reports sooner than later considering the deadline for those reports being only months away, and obtaining the appropriate FinCEN ID's can make that process significantly faster.

If you have questions on whether your business must comply with the CTA, who your business' beneficial owners are, or how to properly file a BOI report; contact an attorney in Lipsitz Green Scime Cambria's Business & Corporate Law Group.