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# Mastering CTA Compliance

*Key Insights for the Year-End  
Filing Deadline*

September 24, 2024

**Seyfarth Shaw LLP**

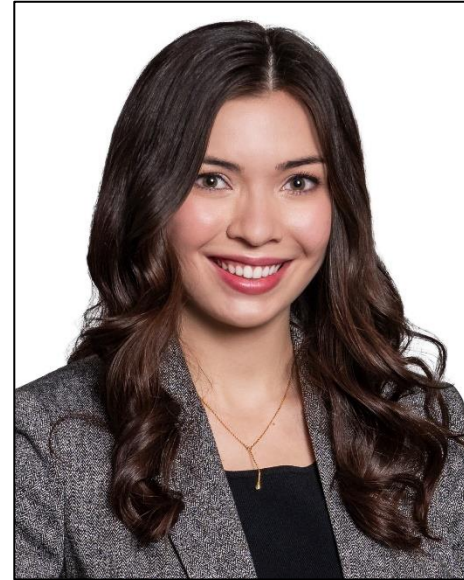
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# CTA Overview

- 01** What Is the CTA?
- 02** Reporting Companies
- 03** Required Filings & Timing
- 04** Beneficial Owners
- 05** Company Applicants

# What Is the CTA?

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- 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.” - FinCEN*

- Simply put, the CTA seeks the disclosure of entity ownership and the prevention of money laundering.
- Filings are made with a federal agency: Financial Crimes Enforcement Network (“FinCEN”).



## Criminal Penalties

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

- Civil Penalties are \$500 per day for a continuing violation. Adjusted for inflation (currently \$591 per day).
- Criminal penalties are up to a maximum of \$10,000 and 2 years in jail.

# Who is Required to Report?

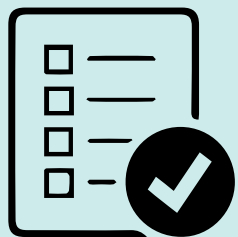
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- “Reporting Companies” – Domestic & Foreign

Unless covered by an exemption, the CTA’s reporting requirements apply to any entity created by, or registered to do business in the United States by, the filing of a document with a Secretary of State (or similar office in the United States).

- Corporations, limited liability companies, limited partnerships, and statutory trusts are generally covered.
- Sole proprietorships, general partnerships, and common law trusts are generally not covered.

# Exemptions: Regulated Entities



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.

If an entity loses an exemption, it has 30 days to make the required filing.

For example, **regulated entities** that may be 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) insurance companies, (ix) state-licensed insurance producers, (x) pooled investment vehicles, (xi) public utilities, and (xii) accounting firms.



# Exemptions: Other Notable Exemptions

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- A **large operating company** is an entity that (i) employs more than 20 full time employees in the U.S., (ii) has an operating presence at a physical office in the U.S. that the entity owns or leases, and (iii) 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
- **Wholly owned subsidiaries** of certain exempt entities
- An **inactive entity** (narrowly defined)

# Inactive and Dissolved Entities

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- To qualify for the “Inactive Entity” exemption, an entity must (1) be in existence before January 1, 2020; (2) not be engaged in active business; (3) not be a “foreign person,” directly or indirectly, wholly or partially; (4) not have experienced a change of ownership in the past 12 months; (5) not have sent or received more than \$1000 in funds in the past 12 months; and (6) not otherwise hold any assets (including equity interests).
- Additionally, FinCEN has noted in the FAQs that an entity that “ceased to exist as a legal entity before January 1, 2024, meaning that it entirely completed the process of formally and irrevocably dissolving” does not need to file a BOI report.
- An entity existing in 2024 or later, even if it ceased to exist before its initial report is due, is obligated to file a BOI report.

# Required Filings and Due Dates

	Existing Entities (as of December 31, 2023)	New Entities
Filing Deadline for <b>Initial BOIR</b>	January 1, 2025	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
- **Updated or Corrected reports:** must be filed within 30 days after a change or discovery of inaccuracy of reportable information
- Deadline for Existing Entities who lose exempt status in 2024

# Required Disclosures

The CTA requires the following be disclosed in the BOIR:

## As to the Company:

1. Full legal name
2. Any trade name or d/b/a
3. Current address in the U.S. of the principal place of business (or, if the principal place of business is outside the U.S., primary location 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 from, and image of, one of the following documents: current passport, state or local government issued or tribal ID, or driver's license (or, if an individual does not possess any of the foregoing, a foreign passport)

*Note: For Reporting Companies formed on or after January 1, 2024, similar information will be required of Company Applicants.*



## FinCEN ID Benefits

- The personal information of the Beneficial Owner must be included in the initial filing and updated for any changes (e.g., residential address change; issued new ID card with new residential address).
- However, the Beneficial Owner can instead provide the information directly to FinCEN and obtain a FinCEN ID number. Instead of disclosing the personal information each time, the Beneficial Owner would merely have to provide its FinCEN ID number to the reporting company.
- **NOTE:** The responsibility for updating personal information shifts to the FinCEN ID holder. As of now, this is a lifetime obligation.
- We recommend all individuals who will be reportable in BOI filings obtain a FinCEN ID number.

# Who are the Beneficial Owners?

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Beneficial Owners are those that directly or indirectly:

Exercise **substantial control** (including negative control) over the entity (serves as a director or senior officer, appoints or removes senior officers or majority of the directors, makes/approves/**influences** major decisions for the entity, or **otherwise** has substantial control).

**OR**

**Own or controls 25% or more** of the ownership interests of the entity (this includes convertible notes, warrants, options and similar instruments, whether or not exercised).

This applies to domestic and foreign entities.

# Company Applicants: Required Information for new entities

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- Reporting required only for newly formed entities (January 1, 2024 and later)
- Company Applicants are required to provide the same information as Beneficial Owners, **however**: (1) information does not need to be updated; and (2) can use business address instead of residential address.
- FinCEN IDs is an available option for reporting on Company Applicants(as of now, with lifelong obligation to update)



## Who are the Company Applicants?

- A “Company Applicant” is defined as: (1) the individual who directly files the document that creates or registers the company, and (2) if more than one person is involved in the filing, the individual primarily responsible for directing or controlling the filing.
- There must be at least one and can be up to two Company Applicants on a BOI filing.
- Generally, a lawyer, paralegal or employee of a corporate service provider will directly file the document.
- The individual, usually an attorney, who plays the greatest role in determining how the filing is managed, what content the document includes, and when and where the filing occurs, will generally be the individual responsible for directing or controlling the filing.





## Helpful Resources

- [File](#) BOI Report with FinCEN
- FinCEN issued [Video Demo: How to File a BOI Report](#)
- FinCEN issued [Filing Instructions](#)
- [Apply](#) for a FinCEN ID
- FinCEN issued [FAQs](#)
- FinCEN issued [Small Entity Compliance Guide](#)
- [Subscribe](#) for FinCEN issued updates
- Seyfarth [Resources](#)



# Complying with the CTA

- 01** Preliminary Actions
- 02** Preparing and Filing the BOIR
- 03** Post-BOIR Filing Considerations
- 04** Other Best Practices

# What to Do

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## Preliminary Actions

## Preparing and Filing BOI Report

## Post BOI Filing Considerations

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 each entity in the Company's org structure is a reporting company under the CTA.
6. Determine if any exemptions apply, and memorialize applicable exemption analysis.

# What to Do

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## Preliminary Actions

## Preparing and Filing BOI Report

## Post BOI Filing Considerations

7. Collect reporting information on the reporting companies.
8. Identify all reportable beneficial owners and control persons for reporting companies.
9. Collect reporting information on beneficial owners or obtain FinCEN Identifier number (FinCEN ID) for each reportable beneficial owner and control person.
10. Identify Company Applicants for reporting companies formed in 2024 or later (2 maximum Company Applicants).
11. Collect reporting information on Company Applicants for reporting companies 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.

# What to Do

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## 13. Determine when to file BOI Report:

- a) If the reporting company was created or becomes a foreign reporting company before January 1, 2024.
- 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 reporting companies created or registered in 2024) or 30 days (for reporting companies created or registered on or after January 1, 2025) of the earlier of the date on which: (1) the company receives notice the creation 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 reporting companies and timely file at FinCEN portal.

# What to Do

## Preliminary Actions

## Preparing and Filing BOI Report

## Post BOI Filing Considerations

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 filing is made (generally, within 30 days of change).
17. File a corrected report if the reporting company discovers an inaccuracy was filed by a reporting company (within 30 days of discovery).
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 (special rule for existing companies that lose their exemption in 2024).
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

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## 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 (e.g., Shareholders' Agreement, Subscription Agreements, Investor Questionnaire, LLC Agreement, convertible notes, warrants, options, etc.).
- Employment Agreements (executive level).
- Director and Officer Agreements (Indemnification Agreements).
- Dissolve Inactive Entities.



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## CLE

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### You will need:

1. **Title:** Mastering CTA Compliance
2. **Date Viewed:** September 24, 2024
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**Questions?**

