



ALERT

# The Corporate Transparency Act: Filing Deadline Fast Approaching

October 22, 2024

**SCHULTE ROTH + ZABEL**



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The bi-partisan Corporate Transparency Act (“CTA”), which became effective on Jan. 1, 2024, by the first final rule implementing the CTA (“BOI Rule”),<sup>1</sup> was enacted to curb illicit finance and money laundering by providing law enforcement access to information about the ultimate individuals who beneficially own and control legal entities formed or registered to do business in the US (each, a “Reporting Company”).<sup>2</sup> Under the BOI Rule, Reporting Companies are required to file a beneficial ownership information report (“BOI Report”) with the US Department of the Treasury’s Financial Crimes Enforcement Network (“FinCEN”). FinCEN expects over 32 million Reporting Companies will be obligated to file a BOI Report and the reporting deadline for existing Reporting Companies is fast approaching. For more information regarding the BOI Rule, please see our prior Alerts [“The Corporate Transparency Act: Key Considerations for Compliance With the Beneficial Ownership Reporting Rule”](#) and [“The Corporate Transparency Act: The Private Funds Guide to Compliance With the Beneficial Ownership Reporting Rule.”](#)

## Key Compliance Dates:

- Reporting Companies formed or registered to do business in the US before Jan. 1, 2024, must file their initial BOI Reports by **Jan. 1, 2025**.
- Reporting Companies formed or registered to do business in the US on or after Jan. 1, 2024, and prior to Jan. 1, 2025, will have 90 days from receiving confirmation of formation or registration to submit a BOI Report to FinCEN and entities formed or registered to do business in the US on or after Jan. 1, 2025, will have 30 days to file a BOI Report.
- Reporting Companies must submit updated or corrected BOI Reports within 30 days of (i) any change to the information previously reported in the BOI Report regarding the Reporting Company or its beneficial owners; or (ii) becoming aware (or having reason to know) of an inaccuracy regarding the information previously reported in their BOI Report.

## Which Entities are Required to File BOI Reports With FinCEN?

Entities must file a BOI Report only if they meet the definition of Reporting Company and do not qualify for an exemption. Determining whether an entity has any reporting obligations or is eligible for an exemption under the BOI Rule is a fact-specific analysis, which must be determined on an entity-by-entity basis. The BOI Rule exempts 23 specific types of entities from the reporting requirements (each, an “Exempt Entity”), many of which are already subject to substantial federal and/or state regulation or already have to provide their beneficial ownership information to a

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<sup>1</sup> 31 C.F.R. § 1010.380; Final Rule, Beneficial Ownership Information Reporting Requirements, 87 Fed. Reg. 59498 (Sept. 30, 2022), available [here](#).

<sup>2</sup> Other types of legal entities, including certain trusts, are excluded from the definition of Reporting Company to the extent that they are not created by the filing of a document with a secretary of state or similar office.



governmental authority. Examples of such Exempt Entities include, but are not limited to, the following:

1. *Large Operating Companies* – Entities (i) with more than 20 full-time employees in the US; (ii) that have filed a federal tax return demonstrating more than \$5 million in gross receipts or sales from US sources in the prior year; and (iii) that have an operating presence at a physical office in the US.
2. *SEC Reporting Issuers* – All SEC reporting issuers under Section 12 or 15(d) of the Securities Exchange Act of 1934 Act (“1934 Act”).
3. *SEC Registered Investment Advisers* – Investment advisers registered with the SEC under the Investment Advisers Act of 1940 (“Advisers Act”).
4. *Venture Capital Fund Advisers* – Investment advisers that are exempt from registration under Section 203(l) of the Advisers Act because they advise solely one or more “venture capital funds” (as defined in Rule 203(l)-1 of the Advisers Act).
5. *Investment Companies* – Investment companies registered with the SEC under the Investment Company Act of 1940 Act (e.g., mutual funds).
6. *Pooled Investment Vehicles* – Any “pooled investment vehicle” that is operated or advised by certain other exempt entities, namely, a bank, credit union, SEC-registered broker-dealer in securities, SEC-registered investment company, SEC-registered investment adviser or venture capital fund adviser.<sup>3</sup>
7. *Registered Broker-Dealers* – Broker-dealers registered with the SEC under the 1934 Act.
8. *Tax Exempt Entities* – Any (a) organization defined in Section 501(c) and exempt from tax under Section 501(a) of the Internal Revenue Code, (b) a political organization defined in Section 527(e)(1) and exempt from tax under Section 527(a) of the Internal Revenue Code, or (c) a trust defined in paragraph (1) or (2) of Section 4947(a) of the Internal Revenue Code.
9. *Subsidiaries of Certain Exempt Entities* – Any entities whose ownership interests are controlled or wholly owned, directly or indirectly, by one or more qualified exempt entities.

## What Information Must Be Included on a BOI Report?

*Reporting Company.* An entity that meets the definition of Reporting Company and is not otherwise an Exempt Entity must report information on itself and the personal information of each Beneficial Owner. Importantly, Reporting Companies formed or registered on or after Jan. 1, 2024, must also report to FinCEN information regarding individuals identified as Company Applicants.

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<sup>3</sup> As used in this exemption, the term “pooled investment vehicle” means any (i) any investment company, as defined in Section 3(a) of the Investment Company Act of 1940; or (ii) any company that: (A) would be an investment company under Section 3(a) but for the exclusion provided by Section 3(c)(1) or Section 3(c)(7); and (B) is identified by its legal name by the applicable investment adviser in its Form ADV filed with the SEC or will be so identified in the next annual updating amendment to Form ADV required to be filed by the applicable investment adviser pursuant to Rule 204-1 under the Advisers Act.



**Beneficial Owners.** The BOI Rule defines a Beneficial Owner as any individual, who directly or indirectly:

1. Exercises *substantial control* over the Reporting Company; or
2. Owns or controls 25 percent or more of the *ownership interests* of the Reporting Company.

An individual exercises substantial control over a Reporting Company if the individual:

1. Is a senior officer of the Reporting Company (i.e., president, CEO, COO, CFO or general counsel or any other individual who lacks the formal title but performs a similar function);
2. Has the authority to appoint or remove a senior officer or a majority of the board of directors (or similar body) of the Reporting Company;
3. Directs, determines or has substantial influence over important decisions made by the Reporting Company, including decisions regarding the Reporting Company's business, finance or structure; or
4. Has any other form of substantial control over the Reporting Company, such as through (a) board representation,<sup>4</sup> (b) ownership or control of a majority of the voting power, (c) rights associated with any financing arrangement or interest in a Reporting Company or (d) voting rights and control over intermediary entities that exercise substantial control over the Reporting Company.<sup>5</sup>

**Company Applicants.** The BOI Rule defines Company Applicant as the individual(s) who: (1) directly files the document (physically or electronically) with a secretary of state or similar office that forms or registers the entity to do business in the US; or (2) is primarily responsible for directing or controlling the filing of the formation document or first registration document. If more than one individual is involved in the filing of the document that created or registered the Reporting Company, then two individuals (but no more) must be reported as Company Applicants.

**Exclusions to the Definition of Beneficial Owner.** The BOI Rule contains five exceptions to the definition of Beneficial Owner: (1) a minor child, provided that a parent's or guardian's information is reported; (2) an individual acting as nominee, intermediary, custodian or agent on behalf of another individual; (3) an individual acting solely as an employee of a Reporting Company (provided that the employee is not a Senior Officer); (4) an individual whose only interest in a Reporting Company is a future interest through a right of inheritance; and (5) a creditor of a Reporting Company.

## What Information Needs To Be Reported?

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<sup>4</sup> Not all board members have substantial control. See FinCEN, Beneficial Ownership Information Reporting, Frequently Asked Questions, FAQ D.9 (issued Sept. 29, 2023) ("Whether a particular director meets [the definition of Beneficial Owner] is a question that the reporting company must consider on a director-by-director basis."), available [here](#).

<sup>5</sup> The trustee of a trust or similar arrangement can be deemed to exercise substantial control.



Reporting Company	Beneficial Owner	Company Applicant
<ul style="list-style-type: none"><li>▪ Legal name</li><li>▪ Tax Identification Number</li><li>▪ Jurisdiction of formation or registration</li><li>▪ Current US address</li></ul>	<ul style="list-style-type: none"><li>▪ Legal name</li><li>▪ Date of birth</li><li>▪ Residential address</li><li>▪ Number and image of state-issued driver's license, state/local/tribe-issued identification document, US passport or foreign passport</li></ul>	<ul style="list-style-type: none"><li>▪ Legal name</li><li>▪ Date of birth</li><li>▪ Business address</li><li>▪ Number and image of state-issued driver's license, state/local/tribe-issued identification document, US passport or foreign passport</li></ul>

## Where to File a BOI Report?

To file a BOI Report, please visit FinCEN's online portal, accessible [here](#).

## What are the Penalties for Non-Compliance?

Any willful failure to comply with the CTA's reporting requirements may result in criminal and/or civil penalties, including fines of \$500 per day (not to exceed \$10,000) and up to two years in prison. Persons that cause a Reporting Company to fail to file or to file a false or incomplete BOI Report may also be liable for civil or criminal penalties.

Given the fast-approaching deadline to file BOI Reports for Reporting Companies created or registered prior to Jan. 1, 2024, entities should assess their BOI Report filing obligations and file any required BOI Report if they have not already done so.

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For assistance in navigating the the CTA's reporting requirements, please contact one of the authors or your attorney at Schulte Roth & Zabel.



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