



The Corporate Transparency Act: Which Business Entities are Impacted, What is Required and How We Can Help

February 14, 2024

By: Andrius R. Kontrimas, Monica M. Youssef and Emma Arroyo

Beginning on January 1, 2024, the Corporate Transparency Act (the “CTA”) requires each domestic and foreign entity that qualifies as a “reporting company” to file a Beneficial Ownership Information Report (“BOIR”) with the Department of the Treasury’s Financial Crimes Enforcement Network (“FinCEN”), which discloses information about the reporting company, the reporting company’s beneficial owners, and the individuals who prepared and filed the formation/registration documents of the reporting company with the Secretary of State (if formed/registered on or after January 1, 2024). Although there are several exemptions to the CTA as outlined below, we expect that many Sheppard, Mullin, Richter & Hampton LLP (“Sheppard Mullin”) clients are reporting companies and must comply with the CTA.

We are available to assist you in understanding the requirements under the CTA and if/how it applies to your business entities. If asked to do so in writing, we can analyze whether an entity is a reporting company under the CTA and if so, prepare an initial draft of the BOIR, assist in determining the beneficial owners, arrange with our third-party vendor to coordinate your submission of the initial BOIR filing, and otherwise advise on matters for CTA compliance. We will not, however, submit the BOIR on behalf of clients or collect personal identifying information for each beneficial owner or company applicant that is required by the CTA, as further described below.

Please be aware of the following important deadlines for CTA compliance:

- All reporting companies in existence prior to January 1, 2024, have a full year to comply with the CTA – the BOIR must be submitted prior to January 1, 2025.
- Reporting companies that are formed/registered on or after January 1, 2024 and before January 1, 2025, will have 90 days from the date of formation/registration to submit the BOIR.
- Reporting companies that are formed/registered after January 1, 2025, will only have 30 days from the date of formation/registration to submit the BOIR.

- Reporting companies must also update or correct a BOIR within 30 days if the information included on a filed BOIR changes or the reporting company becomes aware or has reason to know of an inaccuracy.

We are sending you this Client Alert to generally inform you about the CTA, its requirements for reporting companies, and the penalties for noncompliance. At a minimum, every domestic or foreign entity authorized to do business in the U.S. should analyze whether it has any reporting requirements under the CTA and if so, it will need to undergo a more expansive analysis of its beneficial owners to provide the required disclosures in the BOIR. Please contact your Sheppard Mullin attorney or one of the attorneys on our CTA team listed below if you would like assistance in navigating compliance with the CTA.

Introduction to the CTA

The CTA was enacted as part of the Anti-Money Laundering Act of 2020, which sought to promote transparency of certain business entities in an effort to combat money laundering, terrorist financing, and other illicit activities. There are civil and criminal penalties for persons who do not comply with the reporting requirements of the CTA. These penalties include civil monetary penalties of up to \$500 for each day a violation continues or criminal penalties of up to \$10,000 in fines and two (2) years of imprisonment.

Reporting Companies

Subject to certain exemptions that are listed in [Appendix A](#), an entity is a “reporting company” if it is (1) any corporation, limited liability company, or other entity created by filing a formation document with a Secretary of State within the U.S., or (2) any foreign company that is registered with a Secretary of State or similar office to do business in the U.S.

Notable exemptions include certain entities which already report to the federal government (such as banks and Securities and Exchange Act issuers), tax-exempt entities, wholly-owned subsidiaries of certain entities, inactive entities, and large operating companies (“LOC”). An entity is an LOC if it (1) employs more than 20 full-time employees in the U.S. (independent contractors, leased employees, or, for an S corporation, any shareholder owning two percent (2%) or more ownership does not count as employees), (2) generates more than \$5,000,000 in annual gross receipts (as reported in the federal income tax returns of the year prior), and (3) has an operating presence at a physical office in the U.S.

Importantly, if a company determines it is not a reporting company under the CTA, it does not have to report that it is exempt to FinCEN. If at a later time it loses its exemption, it must file a BOIR within 30 days of losing that exemption and becoming a reporting company.

[FinCEN’s Small Entity Compliance Guide](#) includes helpful information about each of the 23 exemptions FinCEN has outlined and checklists to help you determine whether a company qualifies for an exemption. Please carefully review the qualifying criteria and each of the exemptions before concluding that a company is exempt from CTA reporting.

BOIR Disclosures

If it is determined that the company is a reporting company under the CTA, the company must provide the following disclosure items in its BOIR to FinCEN: (A) Company Information; (B) Beneficial Ownership Information; and (C) Company Applicant Information (if formed/registered on or after January 1, 2024).

A. Company Information

A reporting company must disclose its name, all trade names or DBAs, the current address of its principal place of business in the U.S., its state of formation or registration, and its IRS Taxpayer Identification Number or tax number issued by a foreign registration.

B. Beneficial Owner Information

A reporting company must disclose all of its beneficial owners and provide certain required personal identifying information and corresponding documents for each beneficial owner.

The CTA defines a “beneficial owner” as an individual who, directly or indirectly, either (1) exercises substantial control over a reporting company, or (2) owns or controls at least 25% of the ownership interests of a reporting company.

1. Substantial Control: An individual has “substantial control” if he or she serves as a senior officer of the company, holds authority over the appointment or removal of senior officers or a majority of the board, or has substantial influence over important decisions of the company.

i. Senior Officers: Senior officers include the President, Chief Executive Officer, Chief Financial Officer, General Counsel, Chief Operating Officer, or any other officer who performs a similar function, and expressly excludes any ministerial positions such as a Corporate Secretary or Treasurer.

ii. Substantial Influence Over Important Decisions: An individual has substantial influence over important decisions if he or she has substantial influence over: (a) the nature, scope, and attributes of the company including the sale, lease, mortgage, or other transfer of principal assets, (b) any reorganization, dissolution, or merger, (c) the selection or termination of business lines or ventures, (d) any compensation schemes or incentive programs for senior officers; or (e) the entry into or termination of significant contracts.

Importantly, the CTA includes a catch-all provision to clarify that substantial control can take additional forms not specifically listed. Additionally, substantial control also includes control exerted by any parent or intermediary entities or individuals within those entities.

2. Ownership Interest: An ownership interest includes, but is not limited to: (a) equity, stock, or voting rights, (b) a capital or profit interest, (c) convertible instruments, or (d) options or other non-binding privileges to buy or sell any such interests.

Even if an individual would otherwise be a beneficial owner, he or she may qualify under one of the CTA’s exemptions that modifies the reporting company’s disclosure requirements with respect to that individual. For example, reporting companies should not include minor children in their BOIR, but should disclose the minor’s parent or guardian’s information instead. Further beneficial owner exemptions include: future inheritors; nominees, intermediaries, custodians, agents; certain creditors; and employees who are not senior officers but who exercise substantial control over the reporting company solely by virtue of their employment.

[FinCEN’s Small Entity Compliance Guide](#) includes detailed checklists for each of the beneficial owner exemptions that may help determine whether an individual needs to be disclosed on a reporting company’s BOIR. Reporting companies should carefully review the qualifying criteria before concluding that an individual is exempt.

C. Company Applicant Information

Reporting companies formed on or after January 1, 2024 must disclose a minimum of one (1) and a maximum of two (2) company applicants on their BOIR and include the required personal identifying information and corresponding documents for each company applicant.

The CTA defines a “company applicant” as an individual that either (1) directly filed the document that created or registered the entity with the Secretary of State, or (2) is primarily responsible for directing or controlling the filing of the formation or registration documents by another.

Personal Identifying Information and Corresponding Documentation

The personal identifying information and documentation that must be disclosed for each beneficial owner and company applicant includes his or her (1) full legal name, (2) date of birth, (3) residential street address (this cannot be a company address), (4) ID number and issuing jurisdiction of a non-expired US passport, driver's license, or other government-issued ID, and (5) an image/photocopy of such ID. A significant amount of the information a reporting company must collect and report may qualify as personal data under state and federal privacy laws. Entities governed by these laws must take various measures to comply with privacy laws while ensuring their reporting obligations.

If a beneficial owner or company applicant provides this information to FinCEN directly, he or she can obtain a "FinCEN ID" to be provided on a BOIR in lieu of the items above. Individuals can apply for a FinCEN ID at <https://fincenid.fincen.gov/landing>.

If a Sheppard Mullin attorney is a company applicant because such attorney was primarily responsible for directing or controlling the filing of the formation or registration documents of the reporting company (after January 1, 2024), the Sheppard Mullin attorney will provide his or her FinCEN ID to the reporting company in order for the reporting company to complete the BOIR. Sheppard Mullin attorneys are not providing (or collecting) any personal identifying information or corresponding documentation that must be attached to the BOIR.

Filing a BOIR and Important Deadlines

Reporting companies should submit their BOIRs to FinCEN's Beneficial Ownership Secure System ("BOSS"). A reporting company may submit a PDF BOIR through BOSS or submit a BOIR prepared directly through the BOSS online form. Reporting companies can access BOSS to file a BOIR at <https://boiefiling.fincen.gov/>. FinCEN assures reporting companies that filing a BOIR is simple, secure, and free of charge.

All reporting companies in existence prior to January 1, 2024 must submit their BOIR prior to January 1, 2025. Reporting companies that are formed/registered on or after January 1, 2024, and before January 1, 2025, must submit their BOIR within 90 days from the date of formation/registration. Finally, reporting companies that are formed/registered after January 1, 2025, must submit their BOIR within 30 days from the date of formation/registration.

A reporting company must also update or correct a BOIR if the information included on a filed BOIR changes or the reporting company becomes aware or has reason to know of an inaccuracy. In the case of an update, the reporting company must submit an updated BOIR within 30 days of the change. Note that an updated BOIR is not required upon any change to a company applicant's identifying information. In the case of a correction, a reporting company must submit a corrected BOIR within 30 days after becoming aware or having reason to know of such inaccuracy.

Certification

Each individual submitting a BOIR on behalf of a reporting company (or an application for a FinCEN ID) must certify under criminal penalty that the report or application is true, correct, and complete. Although individual beneficial owners and company applicants must provide their own identifying information and documentation to the reporting company, the reporting company is responsible for submitting its own BOIR and must certify the accuracy and completeness of such BOIR.

How We Can Help

We have the knowledge and resources to assist you in complying with the CTA, including with the following considerations:

1. Analyze whether your business entity is a reporting company or qualifies for an exemption.
2. Determine what information your business entity must report, including identifying beneficial owners based on ownership interest or substantial control, and when to file such report.
3. Identify company applicants and provide FinCEN ID of Sheppard Mullin attorney if such attorney was primarily responsible for directing or controlling the filing of the formation or registration documents of a reporting company that was formed after January 1, 2024.
4. Provide guidance on complying with state and federal privacy laws to protect any personal information collected for CTA compliance purposes.
5. Advise on requirements to update and correct reports, if applicable.

Conclusion

We strongly encourage that you consider whether your business entities are reporting companies under the CTA and establish sufficient systems and procedures to identify, retain, and update pertinent information to enable you to promptly submit a BOIR. Please contact your Sheppard Mullin attorney or one of the attorneys on our CTA team listed below if you have any questions or would like to discuss this further.

Additional information about the CTA requirements can be found at the following FinCEN websites:

[FinCEN's website regarding beneficial ownership information](#)

[FinCEN's brochure introduction to BOIRs](#)

[FinCEN's Small Entity Compliance Guide](#)

[FinCEN's BOIR Frequently Asked Questions](#)

For More Information, Please Contact:



Andrius R. Kontrimas
Partner
713.431.7111
akontrimas@sheppardmullin.com



Monica M. Youssef
Special Counsel and
Director of Transactional Training
714.424.8222
myoussef@sheppardmullin.com



Emma Arroyo
Associate
714.424.8217
earroyo@sheppardmullin.com

This alert is provided for information purposes only and does not constitute legal advice and is not intended to form an attorney client relationship. Please contact your Sheppard Mullin attorney contact for additional information.

APPENDIX A

23 Exemptions to the CTA's Beneficial Ownership Reporting Requirement

1. **Securities reporting issuer:** Any issuer of securities that is: (A) an issuer of a class of securities registered under Sec. 12 of the Securities Exchange Act of 1934, or (B) required to file supplementary and periodic information under Sec. 15(d) of the Securities Exchange Act of 1934.
2. **Governmental authority:** Any entity that: (A) is established under the laws of the United States, an Indian tribe, a State, or a political subdivision of a State, or under an interstate compact between two or more States, and (B) exercises governmental authority on behalf of the United States or any such Indian tribe, State, or political subdivision.
3. **Bank:** Any bank, as defined in: (A) Sec. 3 of the Federal Deposit Insurance Act, (B) Sec. 2(a) of the Investment Company Act of 1940, or (C) Sec. 202(a) of the Investment Advisers Act of 1940.
4. **Credit union:** Any Federal credit union or State credit union, as those terms are defined in Sec. 101 of the Federal Credit Union Act.
5. **Depository institution holding company:** Any bank holding company as defined in Sec. 2 of the Bank Holding Company Act of 1956, or any savings and loan holding company as defined in Sec. 10(a) of the Home Owners' Loan Act.
6. **Money services business:** Any money transmitting business registered with FinCEN under 31 U.S.C. 5330, and any money services business registered with FinCEN under 31 CFR 1022.380.
7. **Broker or dealer in securities:** Any broker or dealer, as those terms are defined in Sec. 3 of the Securities Exchange Act of 1934, that is registered under Sec. 15 of that Act.
8. **Securities exchange or clearing agency:** Any exchange or clearing agency, as those terms are defined in Sec. 3 of the Securities Exchange Act of 1934, that is registered under Secs. 6 or 17A of that Act.
9. **Other Exchange Act registered entity:** Any entity other than that described in exemption 1 (securities reporting issuer), exemption 7 (broker or dealer in securities), or exemption 8 (securities exchange or clearing agency) that is registered with the SEC under the Securities Exchange Act of 1934.
10. **Investment company or investment adviser:** Any entity that is: (A) an investment company as defined in Sec. 3 of the Investment Company Act of 1940, or is an investment adviser as defined in Sec. 202 of the Investment Advisers Act of 1940, and (B) registered with the SEC under the Investment Company Act of 1940 or the Investment Advisers Act of 1940.
11. **Venture capital fund adviser:** Any investment adviser that: (A) is described in section 203(l) of the Investment Advisers Act of 1940, and (B) has filed Item 10, Schedule A, and Schedule B of Part 1A of Form ADV, or any successor thereto, with the SEC.
12. **Insurance company:** Any insurance company as defined in Sec. 2 of the Investment Company Act of 1940.
13. **State-licensed insurance producer:** Any entity that: (A) is an insurance producer that is authorized by a State and subject to supervision by the insurance commissioner or a similar official or agency of a State, and (B) has an operating presence at a physical office within the United States.
14. **Commodity Exchange Act registered entity:** Any entity that: (A) is a registered entity as defined in Sec. 1a of the Commodity Exchange Act, or (B) is: (1) a futures commission merchant, introducing broker, swap dealer, major swap participant, commodity pool operator, or commodity trading advisor, each as defined in Sec. 1a of the Commodity Exchange Act, or a retail foreign exchange dealer as described in Sec. 2(c)(2)(B) of the Commodity Exchange Act and (2) registered with the Commodity Futures Trading Commission under the Commodity Exchange Act.

15. **Accounting firm:** Any public accounting firm registered in accordance with Sec. 102 of the Sarbanes-Oxley Act of 2002.
16. **Public utility:** Any entity that is a regulated public utility as defined in 26 USC 7701(a)(33)(A) that provides telecommunications services, electrical power, natural gas, or water and sewer services within the United States.
17. **Financial market utility:** Any financial market utility designated by the Financial Stability Oversight Council under Sec. 804 of the Payment, Clearing, and Settlement Supervision Act of 2010.
18. **Pooled investment vehicle:** Any pooled investment vehicle that is operated or advised by a person described in exemptions 3 (bank), 4 (credit union), 7 (broker or dealer in securities), 10 (investment company or investment adviser), or 11 (venture capital fund adviser).
19. **Tax-exempt entity:** Any entity that is: (A) an organization that is described in Sec. 501(c) of the Internal Revenue Code of 1986 (determined without regard to Sec. 508(a) of the Code) and exempt from tax under Sec. 501(a) of the Code, except that in the case of any such organization that ceases to be described in Sec. 501(c) and exempt from tax under Sec. 501(a), such organization shall be considered to continue to be described as a tax-exempt entity for the 180-day period beginning on the date of the loss of such tax-exempt status, (B) a political organization, as defined in Sec. 527(e) (1) of the Code, that is exempt from tax under Sec. 527(a) of the Code, or (C) a trust described in paragraph (1) or (2) of Sec. 4947(a) of the Code.
20. **Entity assisting a tax-exempt entity:** Any entity that: (A) operates exclusively to provide financial assistance to, or hold governance rights over, any entity described in exemption 19 above (tax-exempt entity), (B) is a United States person, (C) is beneficially owned or controlled exclusively by one or more United States persons that are United States citizens or lawfully admitted for permanent residence, and (D) derives at least a majority of its funding or revenue from one or more United States persons that are United States citizens or lawfully admitted for permanent residence.
21. **Large operating company:** Any entity that: (A) employs more than 20 full time employees in the United States, with “full time employee in the United States” having the meaning provided in 26 CFR 54.4980H-1(a) and 54.4980H-3, except that the term “United States” as used in those sections of the CFR have the meaning provided in 31 CFR 1010.100(hhh), (B) has an operating presence at a physical office within the United States, and (C) filed a Federal income tax or information return in the United States for the previous year demonstrating more than \$5,000,000 in gross receipts or sales, as reported as gross receipts or sales (net of returns and allowances) on the entity’s IRS Form 1120, consolidated IRS Form 1120, IRS Form 1120-S, IRS Form 1065, or other applicable IRS form, excluding gross receipts or sales from sources outside the United States, as determined under Federal income tax principles. For an entity that is part of an affiliated group of corporations within the meaning of 26 USC 1504 that filed a consolidated return, the applicable amount shall be the amount reported on the consolidated return for such group.
22. **Subsidiary of certain exempt entities:** Any entity whose ownership interests are controlled or wholly owned, directly or indirectly, by one or more entities described in exemptions 1, 2, 3, 4, 5, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 19, or 21 set forth above.
23. **Inactive entity:** Any entity that: (A) was in existence on or before January 1, 2020, (B) is not engaged in active business, (C) is not owned by a foreign person, whether directly or indirectly, wholly or partially, (D) has not experienced any change in ownership in the preceding twelve-month period, (E) has not sent or received any funds in an amount greater than \$1,000, either directly or through any financial account in which the entity or any affiliate of the entity had an interest, in the preceding 12 month period, and (F) does not otherwise hold any kind or type of assets, whether in the United States or abroad, including any ownership interest in any corporation, limited liability company, or other similar entity.