



The CTA in Practice: What is a Company to do?

April 1, 2024

The Corporate Transparency Act (CTA) creates new reporting requirements for small businesses such as corporations, LLCs, and certain partnerships (“reporting companies”). It gathers information about *individual* beneficial owners (“BOI”) through digital filings submitted to the Financial Crimes Enforcement Network (FinCEN). The responsibility for compliance falls on the business entity itself, and entities should put a plan for compliance in place to collect the required data and file the BOI timely and accurately. More explanation of the CTA concepts and definitions can be found in the detailed LeBlanc & Young companion memorandum (available on our website or contact us if you would like a copy), or on the FinCEN website, linked at the end of this memo.

Entities may file using one of two filing methods through the FinCEN website (link below), or they may obtain the services of a third-party provider. Entities existing on December 31, 2023 must file by January 1, 2025. Entities created in 2024 will have 90 days after creation to file. Entities created after 2024 will likely have an even shorter window. These rules are changing frequently, and entities should confirm requirements before initiating filings. Failing to comply exactly with the reporting rules may result in significant fines (or even potential criminal exposure), with no exceptions at this point for best efforts or substantial compliance.

Because filing CTA reports accurately will require constant monitoring of up-to-date personal information, LeBlanc & Young will not make BOI filings on behalf of entities. However, we will help entities determine whether they have a BOI filing obligation, and help entities identify their beneficial owners for CTA purposes, if we are specifically engaged to provide CTA advice through a separate engagement letter. We can also discuss with you whether you might make the filing yourself on the FinCEN website or use a third-party provider.

Information Gathering and Preparation

BOI filings will report detailed information about: (i) the entity itself, (ii) individuals who own (directly or indirectly) 25% or more of the entity, and (iii) individuals who exercise substantial control over the entity.

For the reporting company, this information includes:

- The legal name of the entity, d/b/a names, and the street address for its principal place of business.
- The jurisdiction of formation.
- The EIN of the entity.

For individuals, this information includes:

- Name, date of birth, and residential address.

- Copy of one of: (a) a non-expired U.S. passport, (b) a non-expired state, local, or tribal identification document, (c) a non-expired state-issued document, or, if these are not available, (d) a non-expired foreign passport.

The reporting company *itself* is responsible for filing the initial BOI report, and it must accumulate the required information and substantiating documentation. The reporting company has an ongoing responsibility to keep its BOI filing information current. If any information on the filing changes, the entity has only thirty days to report the new information. For example, if the entity acquires a new beneficial owner, or if any beneficial owner's address changes, or if there is any change in any substantiating document (e.g., a new license or passport is issued for a beneficial owner), the entity must file an updated CTA report with FinCEN. Individuals who do not wish to give information to the reporting company may instead obtain a special identifying number by providing their BOI information to FinCEN, but that individual must then keep all information current directly with FinCEN.

It is critical that all reporting companies put a structure in place for CTA compliance. Steps to consider in your process would include:

- **Identify the Beneficial Owners**, and for newly created entities, also identify company applicants.
- **Identify who will accumulate required information** and keep the information current and secure.
- **Gather the needed data for the entity** from all parties, including substantiating documentation or obtain FinCEN identifying number.
- **Assign responsibility for filing** to a person or department within the entity.
- **Determine filing method**, either on the BOI filing website or via a third-party provider.
- **Make initial filing.**
- **All parties must understand their obligation to report changes in information** and they know whom to contact at the entity with updates.
- **Supplement filing as needed with new information.**

Filing Mechanics

All filings made directly to FinCEN must be made through its BOI website. There are two methods currently on the website to initiate a filing: one is a web-based form, and the other is a fillable PDF. If a supplemental filing is needed to report updates or correct mistakes, an entirely new submission must be made. Right now, it appears that the web-based form would require entirely new data input for each supplemental submission, while a fillable PDF that the entity has saved can be changed and resubmitted. Alternatively, a reporting company can retain a third-party provider to make the filing, with all necessary information. Because BOI filings are so new, we do not yet have any recommended providers, but we may develop a specific recommendation in time. That said, several providers may be good options. **CT Corporation** is a well-known and longstanding provider for business and legal filings, and it has started a platform to assist with the CTA (link below). A new organization formed to assist with BOI filings is **FinCEN Report** (link below), established by a lawyer with a long career in corporate law. **CSC** (link below) is a long-standing organization that helps businesses with myriad compliance issues.

How We Can Help

The LeBlanc & Young lawyers are happy to assist clients who would like our help with identifying an entity's beneficial owners. This determination will require evaluating the entity's direct and indirect ownership structure and the positions of control over the entity, which may in turn require a detailed review of the entity's corporate documents. These issues can be especially complex when a trust or estate is an owner of the entity. We would need to create a separate engagement to undertake this advice, to be charged at hourly rates. The engagement would not include preparing or submitting the entity's BOI filing to FinCEN for the reasons described above, but we can discuss the entity's options for filing if it would be helpful. Please contact us if we can be of assistance in reviewing your entity's CTA compliance.

Links for More Information

- 1) FinCEN's BOI Small Entity Compliance Guide: https://www.fincen.gov/sites/default/files/shared/BOI_Small_Compliance_Guide.v1.1-FINAL.pdf
- 2) FinCEN summary memo published in December 2023: https://www.fincen.gov/sites/default/files/shared/BOI_Reporting_Key_Questions_11.23.pdf

Links for Third-Party Filing Companies:

- 1) FinCEN BOI filing website: <https://boiefiling.fincen.gov/>
- 2) CT Corporation CTA platform: <https://www.wolterskluwer.com/en/solutions/ct-corporation/beneficial-ownership-information>.
- 3) FinCEN Report: <https://fincenreport.com/fincen-report-for-business-owners/>.
- 4) CSC: <https://www.cscglobal.com/service/corporate-filings/corporate-transparency-act/#>