

THE CORPORATE TRANSPARENCY ACT | JANUARY 2, 2024

# The Corporate Transparency Act: Ready, Set, Go!

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It's official: the Corporate Transparency Act (the "Act") has gone into effect January 1, 2024. On December 21, 2023, the Financial Crimes Enforcement Network ("FinCEN") issued its second final rule establishing the framework for access to and protection of beneficial ownership information ("BOI") pursuant to the CTA. During the final day of 2023, it was clear that FinCEN was preparing itself to begin the BOI reporting as of January 1, 2024. Even though a federal holiday, the BOI E-Filing system became live on January 1, 2024. Reporting companies can now go to <https://boiefiling.fincen.gov/> to file their BOI reports.

## Background

As background, the Act was enacted into U.S. federal law on January 1, 2021 as a new national beneficial ownership reporting regime for U.S. companies, and non-U.S. companies doing business in the United States.<sup>1</sup> In broad terms, the Act creates a national company beneficial ownership registry accessible only by law enforcement, government agencies and other officials, and requires reporting companies to provide certain identifying information of its beneficial owners and company applicants to FinCEN. The purpose of the Act is to prevent the illicit use of so called "shell companies" to conceal illegal activity or to facilitate money laundering, tax evasion and other criminal activities.

FinCEN previously indicated its intent to issue three planned rulemakings to implement the Act. The first rulemaking was the final rule that FinCEN issued on September 29, 2022, implementing the BOI reporting provisions of the CTA. The second rulemaking was the Notice of Proposed Rulemaking that FinCEN issued on December 15, 2022, which will govern access to and protection of BOI. The third rulemaking will revise FinCEN's Customer Due Diligence rules no later than one year after the effective date of the regulations contained in the final rule (i.e., January 1, 2024).

Since December 15, 2022, FinCEN has issued several guidance materials for the public with the most recent coming on December 21, 2023.<sup>2</sup>

## Latest Guidance

[Beneficial Ownership Information Access and Safeguards: Second Final Rule](#)

On December 21, 2023, FinCEN issued a second final rule that prescribes the circumstances under which BOI reported to FinCEN may be disclosed to authorized BOI recipients. FinCEN claimed it carefully considered extensive public comments, along with extensive interagency consultations.

Pursuant to the second final 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; (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 will be subject to specific security and confidentiality requirements, in line with the CTA, to protect the security and confidentiality of BOI.

FinCEN will take a phased approach to providing access to the BOI system from which authorized users may obtain BOI. The first stage will be a pilot program for a handful of key Federal agency users starting in 2024. Federal agencies engaged in national security, intelligence, and law enforcement activity; State, local, and Tribal law enforcement agencies; and Treasury personnel will be able to access and query the BOI system immediately.

The second final rule reiterates that the CTA makes it unlawful for any person to knowingly disclose or knowingly use BOI obtained by that person from a report submitted to, or an authorized disclosure made by, FinCEN, unless such disclosure is authorized under the CTA. The CTA provides for civil penalties in the amount of \$500 for each day a violation continues or has not been remedied. Criminal penalties are a fine of not more than \$250,000 or imprisonment for not more than 5 years, or both. The CTA also provides for enhanced criminal penalties, including a fine of up to \$500,000, imprisonment of not more than 10 years, or both, if a person commits a violation while violating another law of the United States or as part of a pattern of any illegal activity involving more than \$100,000 in a 12-month period. The second final rule makes clear that violating applicable requirements could also lead to FinCEN suspending a requester from access to the BOI system.

### Updated FAQs

FinCEN also recently updated its FAQs originally issued on March 24, 2023. Certain FAQs were added, or modified as of December 12, 2023. The additional FAQs that were added address, amongst other things:

- Individuals filing on behalf of a Reporting Company will need to provide basic information on themselves when submitting the BOI report;
- Making it more clear that the activity or revenue of a company is relevant for determining if a

company meets one of the exemptions from a Reporting Company;

- Making clear that the only way to satisfy the reporting under the CTA is through the FinCEN BOI report and not any other filings or reports submitted to other state or federal agencies;
- Making clear that a change to the type of ownership interest held by a beneficial owner is not a reason to file an updated BOI report (e.g., conversion from preferred stock to common stock); but that a change to the legal name of the reporting companies is a reason to file an updated BOI report;
- Making clear that a Reporting Company can file a late BOI report (however, the Reporting Company should be aware of the risk of penalties for filing late); and
- Further clarifications when corporate entities and individuals could be held liable for willful violations under the CTA.

### Question Portal

On December 21, 2023, FinCEN also updated its BOI website with a question portal and chat box. As of the date of this post, neither application was functioning properly. It is anticipated that FinCEN will receive numerous questions and comments for future guidance after these applications begin functioning properly.

### **Next Steps**

The speculation is over. The BOI E-Filing system is live. Reporting companies created or registered on or after January 1, 2024 will have 90 days to file their initial BOI report. Such reporting companies should be organizing themselves to determine internally who will handle such reporting to avoid any penalties under the CTA. Reporting companies in existence prior to January 1, 2024 will still have until January 1, 2025 to file their initial BOI report.

Now is the time to prepare. We will continue to monitor developments of the Act and its implementation to ensure that we are ready to advise you. We are available to answer your questions in an effort to assist you with compliance with the Act and the final rules.

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[1] FinCEN, Privacy Act of 1974, System of Records, Notice of a new system of records, Federal Register/Vol. 88, No. 176/Wednesday, September 13, 2023/Notices, p. 62,889-62,892.

[2] Please refer to our prior posts discussing the prior issued guidance. [<https://www.bilzin.com/we-think-big/topics/corporate-transparency-act>]

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