

TYPES NOT MAPPED YET March 14, 2024 | TTR not mapped yet | Eileen Duffy Robinett

# Corporate Transparency Act: Steps to File an Initial BOIR

The following is a summary of steps entities need to take in connection with filing an initial Beneficial Ownership Information Report ("BOIR") with the U.S. Department of Treasury's Financial Crimes Enforcement Network ("FinCEN") under the Corporate Transparency Act ("CTA").<sup>1</sup>

The steps in the BOIR filing process outlined below require detailed and thoughtful analysis of how the often-complex CTA rules apply to an entity's unique facts and circumstances. Familiarity with the [CTA's regulations](#) is necessary to properly comply with BOIR obligations. FinCEN has published its [Small Entity Compliance Guide](#), as well as [Frequently Asked Questions](#), and it is expected to periodically update those materials and to provide additional guidance regarding the CTA.

This summary is not intended to be exhaustive of issues that may need to be considered. Thompson Coburn has prepared a more detailed memorandum and FAQs providing additional information about the CTA. If you would like a copy of these other materials or have questions about the CTA, please reach out to your Thompson Coburn contact.

**1. Assess if Entity is Subject to CTA.** Determine whether the entity is:

1. Subject to the CTA (is a U.S. corporation, limited liability company or other entity created by a filing with a secretary of state or similar state or Tribal authority, or is an entity formed under the laws of a foreign country and registered to do business in a U.S. state or Tribal jurisdiction by a filing with a secretary of state or similar state or Tribal authority), and
2. Is not able to meet the requirements of any of the 23 exemptions from the CTA.

**2. Determine Entity's Beneficial Owners.** Assess the entity's unique control and ownership structure to determine the natural persons who must be reported by it as "Beneficial Owners" because they directly or indirectly:

1. Exercise substantial control over the entity, or
2. Own or control 25% or more of the ownership interests of the entity.

**3. Determine Entity's Company Applicants.** If the entity was formed (or, in the case of an entity formed under the laws of a foreign country, first registered to do business in the U.S.) on or after January 1, 2024<sup>2</sup> determine the natural persons (no more than two) who:

1. Filed its formation documentation (or, in the case of an entity formed under the laws of a foreign country, its first qualifying documentation) with the applicable secretary of state or similar state or Tribal authority, and
2. If more than one individual participated in the filing, was primarily responsible for directing or controlling that filing.

**4. Collect Information from Beneficial Owners and Company Applicants.** Collect (and consider the proper storage of) the following information from each of the entity's Beneficial Owners and, if applicable, Company Applicants:

1. Full legal name,
  2. Date of birth,
  3. Complete current **residential** street address (except that Company Applicants who form or register companies in the course of their business can instead report their business street address), and
  4. Unique identifying number, issuing jurisdiction and image of the individual's unexpired U.S. passport, driver's license issued by a U.S. state or territory, identification document issued by a state, local government or Indian tribe, or if the individual does not have any of the foregoing documents, foreign passport.
5. **FinCEN ID Number as Alternative.** As an alternative to collecting, storing and reporting the information set forth in item 4 above about a Beneficial Owner and, if applicable, a Company Applicant (and needing to update the BOIR should any of that information change for a Beneficial Owner), obtain such individual's FinCEN ID number, and report that unique number to FinCEN in lieu of the specified information for the individual. Individuals can apply for a FinCEN Identifier by creating an account with [login.gov](#) and submitting the required information to FinCEN through its [website](#).
6. **Prepare BOIR Electronically.** Access the BOIR E-filing System electronically through [FinCEN's website](#) to prepare the BOIR. The entity may either prepare the BOIR in PDF form and then submit it, or prepare and submit the form online. In addition to the information set forth above regarding an entity's Beneficial Owners and, if applicable, its Company Applicants, the entity will also need to report the following information about itself:
1. Full legal name,
  2. Any alternative or doing-business-as (d/b/a) names,
  3. Current street address of its principal place of business in the United States (no P.O. boxes permitted),
  4. State, Tribal or foreign jurisdiction of formation,
  5. For entities formed under the laws of a foreign country, the state or Tribal jurisdiction where first qualified or registered to do business in the U.S., and
  6. Internal Revenue Service taxpayer ID number ("TIN") (including an employer identification number ("EIN")), or if a foreign entity does not have a TIN, a tax identification number issued by a foreign jurisdiction and the name of the jurisdiction.
7. **Submit BOIR.** Certify that the information included in the BOIR is true, correct and complete and submit the form electronically with FinCEN. There are potential penalties for willful failure to file the BOIR or willfully providing false or fraudulent information in the BOIR.
8. **Alternatively, Consider Use of Filing Service for BOIR Preparation and/or Filing.** Assess whether a third-party provider of CTA filing services ("Filing Service Company") for BOIR submissions should be engaged. Filing Service Companies can assist in managing the burdens of submitting the information required in the BOIR filings and in some cases will file the BOIR on behalf of the entity. These companies include traditional corporate service providers such as Cogency Global Inc., CT Corporation and Corporation Service Company (CSC), and newer more specialized companies, such as FinCEN Report Company LLC, which have recently entered the CTA compliance space.
9. **Deadlines for Filing BOIRs.** Ensure that the BOIR is filed within the applicable deadlines, as follows:
1. *Companies In Existence or Registered Prior to January 1, 2024:* By January 1, 2025.
  2. *Companies Formed or First Registered in 2024:* Within 90 days of actual or public notice of the creation or registration.
  3. *Companies Formed or First Registered After December 31, 2024:* Within 30 days of actual or public notice of the creation or registration.
10. **Update BOIR When Information Changes.** Update information filed in a BOIR about the reporting entity or its Beneficial Owners (but not its Company Applicants) if reported information changes after the initial filing. The updated BOIR must be filed within 30 days of the change.
1. *On March 1, 2024, the CTA was declared unconstitutional by a federal district court in Alabama, and the Treasury Department appealed the ruling on March 11, 2024. The Treasury Department has taken the position that the reporting requirements of the CTA continue to apply to entities other than the plaintiffs in that specific district court case, so there is currently no change in reporting obligations for the vast majority of U.S. entities due to this litigation. ↩*



2. If formed (or, in the case of an entity formed under the laws of a foreign country, first registered to do business in the U.S.) before January 1, 2024, the entity does not need to report "Company Applicants."



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