

Corporate Transparency Act Beneficial Ownership Reports Due by Year End – *Article Updated*

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Editor's Note: The Corporate Transparency Act (CTA) was enjoined by a federal court in Texas on Dec. 3. In *Texas Top Cop Shop, Inc. v. Garland*, No. 4:24-cv-478, the court issued a nationwide preliminary injunction, temporarily blocking the enforcement of the CTA and its associated Beneficial Ownership Information (BOI) Reporting Rule pending the outcome of litigation.

This injunction also stayed the reporting deadline for business which was set for Jan. 1, 2025. The nationwide injunction prevents the government from enforcing the reporting requirements of the CTA and the regulations, and on Dec. 6, 2024, FinCEN suspended reporting while the injunction remains in effect.

Reporting companies should closely monitor for further developments. The Department of Justice has filed an appeal to the U.S. Court of Appeals for the Fifth Circuit in *Texas Top Cop Shop*, and it remains possible that the BOI Reporting Rule may be reinstated.

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Starting in 2024, most corporate entities are now required to file a Beneficial Ownership Information Report (BOIR) to comply with the Corporate Transparency Act (CTA). For business entities formed or registered before Jan. 1, 2024, the deadline to file an initial BOIR with the U.S. Treasury Department's Financial Crimes Enforcement Network (FinCEN) is just weeks away.

If your business or entity may have a reporting requirement and you haven't filed your report, now is the time to collect the information needed to file **before Jan. 1, 2025**.

Who Must Report?

The CTA applies to "reporting companies," which include most entities formed or registered in the United States, such as corporations, LLCs and partnerships. Since the start of 2024, all reporting

companies formed or registered before Jan. 1, 2024, are required to file a BOIR with FinCEN that contains information for the entity and each of the entities' "beneficial owners."

Entities that have a filing requirement under the CTA are required by law to submit a BOIR by the filing deadline. Failure to comply will generate civil penalties up to \$500 per day and criminal penalties up to \$10,000 per day and/or imprisonment of up to two years while the entity is not in compliance.

Information Needed to Complete a BOIR?

To comply with the requirements of the CTA, a reporting company must file information related to the reporting entity and all beneficial owners. To complete a BOIR, the reporting company should compile the following:

1. Reporting company information:

- Full legal name, including any trade names and d/b/a names
- Full address of the reporting company. The address cannot be a P.O. box or the address of a registered agent.
- Employer Identification Number (EIN) or Taxpayer Identification Number (TIN)
- An image of an identifying document from the formation jurisdiction, such as the articles of incorporation

2. All beneficial owner information (BOI) and company applicant information, which includes:

- Full legal name
- Date of birth
- Current residential address for beneficial owner
- An identification document, such as a driver's license or passport
- An image of the identification document

A "beneficial owner" is any individual who, directly or indirectly exercises substantial control over the reporting company (for example, through service as a senior executive such as CEO, CFO or general counsel, or through other authority to make substantial decisions on behalf of the entity), owns or controls 25% or more of the ownership interests of the reporting company or owns or controls a majority of the voting equity in the reporting company.

If a private trust meets the requirements of a reporting company as defined by the CTA, it must also submit a BOIR. For a trust, the beneficial owners include:

- The trustee and anyone else with authority to vote or dispose of trust assets.
- A beneficiary who is the sole permissible recipient of income or principal or has the right to demand a distribution of or withdraw substantially all trust assets.
- A grantor/settlor who has the right to revoke or withdraw assets.

Preparing to File a BOIR?

If you believe that your business or entity may have a CTA filing requirement, there are things to you can do now to prepare to file. To prepare to file a BOIR an entity should do the following:

- Determine if your entity is a reporting company.
- Determine which individuals will be considered “beneficial owners” for the reporting company under the CTA.
- Collect the required information that will be needed to complete the BOIR for each beneficial owner.

An entity can file its BOIR through the FinCEN reporting portal. Once the report is submitted, FinCEN will send an email confirming that the report was received and accepted.

Plunkett Cooney is here to help you understand the Corporate Transparency Act Beneficial Ownership Report process. Contact one of our attorneys if you would like more information.