

# **Corporate Transparency Act**

## **Frequently Asked Questions**

### Emerging Companies/Venture Capital Practice November 29, 2023

#### 1. Why do companies need to report beneficial ownership information (BOI) to the U.S. Financial Crimes Enforcement Network (FinCEN)?

The Corporate Transparency Act (CTA) became law in 2021 with the expressed intention of inhibiting the ability of “malign actors” to conceal their ownership of entities that facilitate illicit activity. The CTA added a new section to the Bank Secrecy Act (BSA) that requires certain types of domestic and foreign entities to submit BOI to FinCEN. The requirements of the CTA, and the rules promulgated by FinCEN under the CTA, are a major change for companies operating in the U.S.

#### 2. Which entities need to file BOI reports?

Corporations, LLCs, limited partnerships, statutory trusts, LLPs, LLLPs, and other entities that are created by the filing of a document with a secretary of state or similar office of a U.S. state or tribe, as well as entities formed under the law of a foreign country and registered to do business in any U.S. state or tribal jurisdiction. These entities are referred to as “reporting companies”. We expect that most of Goodwin’s early stage clients will be required to comply with the CTA, although in limited circumstances, a client may be able to take advantage of an exemption from reporting.

#### 3. Are any entities exempt from the CTA’s filing requirement?

There are 23 types of entities that are exempt from the BOI reporting requirements. These exempt entities include publicly traded companies, many nonprofits, and certain large operating companies. In each case, specific requirements must be met to qualify for exemption, and we expect that most early-stage companies will not be exempt. See **Exhibit A** to the applicable [Goodwin CTA Compliance Toolkit](#) for a list of the exempt entities and their exemption requirements.

#### 4. What information will be required to be reported to FinCEN by a reporting company?

A reporting company must provide the following information:

- Full legal name of the reporting company;
- Any trade names or DBAs (registered or not);
- Street address of principal place of business (if a domestic reporting company) or primary location in the U.S. where the reporting company conducts business (if a foreign reporting company) (P.O. boxes and addresses of agents are not acceptable);
- Jurisdiction of formation;
- For a foreign reporting company, the state or tribal jurisdiction where the company first registers;
- Taxpayer ID (must be an IRS-issued Taxpayer ID, if held by the reporting company; if issued by a foreign jurisdiction, the name of such jurisdiction);
- Identity of and certain other information regarding each beneficial owner (see Question 7 below); and
- If applicable, each company applicant (see Question 6 below).

We expect that most of the information will be easily available to the reporting company, but that timely and safe collection of information regarding beneficial owners could require advanced planning and outreach by the reporting company.

### 5. What information for each beneficial owner will be required to be reported by a reporting company?

Reporting companies need to provide the following for each beneficial owner or company applicant, if applicable, in the BOI report:

FinCEN Identifier (see Question 10 below)	<b>OR</b>	The following information: Full Legal Name Date of Birth Current Residential Street Address** Image of Identification Document (e.g., driver's license or passport) Identification Number and Issuing Jurisdiction of Identification Document
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*\*\* Company applicants (but not beneficial owners) can use a business address if the company applicant "creates entities in the ordinary course of such company applicant's business". If the individual does not have a street address in the U.S., a street address in a foreign jurisdiction may be reported.*

### 6. Who are "company applicants"?

A company applicant is (i) the individual who directly files the document that creates a domestic reporting company or that first registers a foreign reporting company; and (ii) the individual primarily responsible for directing or controlling such filing, if more than one person is involved in the filing of the document. **Reporting companies in existence prior to January 1, 2024 do not need to provide the information of any company applicant.** For a company formed on or after January 1, 2024, there will be at least one but not more than two company applicants.

### 7. Who are "beneficial owners"?

A beneficial owner is an individual who either directly or indirectly: (1) exercises substantial control over the reporting company, **or** (2) owns or controls 25% or more of the reporting company's ownership interests (including, under some circumstances, 25% or more of a particular class of ownership interests). See **Exhibit B** to the applicable [Goodwin CTA Compliance Toolkit](#) for the definition of beneficial owner, exemptions to the definition and how to determine who is deemed a beneficial owner for purposes of the CTA. Importantly, "substantial control" is both a bright line test – for example, directors and senior officers will be beneficial owner by virtue of their position – and a broad, nuanced category that may sweep in a number of investors or individuals associated with investors, depending on a company's particular circumstances.

FinCEN's [Small Entity Compliance Guide](#) provides checklists and examples that may assist in identifying beneficial owners (see Chapter 2.3 "What steps can I take to identify my company's beneficial owners?").

### **8. When do initial BOI reports need to be filed with FinCEN?**

Reporting companies formed or registered on or after January 1, 2024 but before January 1, 2025 must file their initial reports to FinCEN within 90 calendar days of formation or registration while reporting companies formed or registered on or after January 1, 2025 must file their initial reports to FinCEN within 30 calendar days of formation or registration. If the entity was in existence before January 1, 2024 the initial report to FinCEN is due by January 1, 2025. Please see **Initial Filing for New Entity Formed on or After January 1, 2024** in the [Goodwin CTA Compliance Toolkit](#) for additional information on the initial filing of a reporting company formed on or after January 1, 2024 and **Existing Entity as of January 1, 2024 – Transition Compliance Plan** in the [Goodwin CTA Compliance Toolkit](#) for additional information on the initial filing of a reporting company in existence before January 1, 2024.

### **9. How do I file the BOI report?**

FinCEN is currently developing the online system where the BOI reports will be filed, and we expect additional information to be available soon.

### **10. What is a FinCEN identifier and how do I obtain one?**

The FinCEN identifier is a unique identifying number that FinCEN will issue to an individual or reporting company, upon request. In order to obtain a FinCEN identifier, an individual must provide directly to FinCEN the same information that the individual otherwise would be required to report to the relevant reporting company (see Question 5). The electronic interface to apply for and receive a FinCEN identifier, like the BOI reporting system, is still in development. Goodwin generally recommends that FinCEN identifiers be obtained, once the system become available, in order to protect the personally identifiable information of each individual.

### **11. What can entities in existence before January 1, 2024 be doing in preparation for filing an initial BOI report?**

The initial report is not due until January 1, 2025. However, we recommend that clients consider getting out ahead of this issue, because there could be substantial analysis required to identify beneficial owners as well as outreach and coordination to ensure that the beneficial owners are providing the information in a timely manner. We generally encourage potential beneficial owners to obtain a FinCEN identifier as soon as the system becomes available, so that such individuals do not need to transmit personal identifying information to Goodwin or otherwise. Call your Goodwin contact to discuss the process and what you will need to review and review the [Goodwin CTA Compliance Toolkit](#).

### **12. What can entities that are formed on or after January 1, 2024 do in preparation for filing an initial BOI report?**

As part of their initial formation or onboarding, Goodwin clients will be asked to identify their beneficial owners and to provide the required information. We generally encourage potential beneficial owners to obtain a FinCEN identifier as soon as the system becomes available, so that such individuals do not need to transmit personally identifiable information to Goodwin or otherwise.

Where Goodwin is helping with the initial formation, we expect that there will be two company applicants: one being an individual at the filing service, and the second being a Goodwin partner.

### **13. After the initial filing is completed, do we have any other reporting obligations?**

Yes! Any events that change who is a beneficial owner of an reporting company will trigger the filing of a new BOI report within 30 calendar days of such event. Companies will need to reassess beneficial ownership after (among other things) a change in officers and directors, a change in the capitalization of the company, entering into a new agreement that grants certain consent/veto rights, or the termination of an existing agreement that granted certain consent/veto rights. Capitalization changes can be triggered by non-voting equity instruments such as SAFEs, convertible notes and options, so please work with your Goodwin contact on this analysis.

### **14. When do updates to BOI reports need to be filed?**

If there is a change in beneficial ownership information or the reporting company becomes aware of an inaccuracy after the initial filing is made, then any updates or corrections to the filing must be made within 30 calendar days of such change or the date the company becomes aware of the inaccuracy. See **Ongoing Filing Obligations for Reporting Companies** in the [Goodwin CTA Compliance Toolkit](#) for additional information.

### **15. Is this just a company obligation? Or do investors need to prepare too?**

Investor's counsel should assess (with company counsel) whether the investor will hold 25% or more, have substantial control, or both. Investing funds should confirm (with their fund counsel - whether Goodwin or otherwise) any information – as a result of the analysis of beneficial ownership/substantial control – that the fund will be required to provide to the company in connection with the financing. We expect that investors and companies will negotiate representations, warranties and covenants regarding upfront and ongoing obligations under CTA – including, potentially, an ongoing obligation of investors to provide information to the company (e.g., change in the investor's status, such as internal changes to the investor's beneficial owners that may require an updated report by the company). Note that we have prepared form representations and warranties and covenants for inclusion in financing documents, with the goal of finding a reasonable balance that can be acceptable on both the investor and company side.

## Helpful Resources:

[Goodwin Corporate Transparency Act Knowledge Center](#)

[FinCEN's Beneficial Ownership Information Reporting – Frequently Asked Questions](#)

[FinCEN's Small Entity Compliance Guide – Beneficial Ownership Information – Reporting Requirements](#)

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