

Alert | Financial Regulatory & Compliance



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FinCEN Updates Frequently Asked Questions on Beneficial Ownership Reporting Rule Ahead of Jan. 1, 2024, Effective Date

Go-To Guide:

- FinCEN has once again updated its Frequently Asked Questions (**FAQs**) to provide additional guidance on beneficial ownership information (**BOI**) reporting requirements under the Corporate Transparency Act (**CTA**).
- Among other things, FinCEN clarified its expectation that Reporting Companies ensure the accuracy of BOI obtained from third parties.
- FinCEN also confirmed that both companies and individuals can be responsible for willful non-compliance with the CTA, including individual filers, Reporting Companies themselves, their senior officers, and beneficial owners who refuse to provide required information to a Reporting Company.

Starting Jan. 1, 2024, the CTA mandates that certain U.S. legal entities and foreign entities registered to do business in the United States (collectively, **Reporting Companies**) report certain BOI to the U.S. Department of the Treasury's Financial Crimes Enforcement Network (**FinCEN**), as implemented by FinCEN's September 2022 Final Rule.¹ Ahead of the Final Rule's effective date, FinCEN has published

¹ GT covered BOI reporting requirements in detail in an [October 2023 GT Alert](#).

guidance in a variety of formats, including virtual and in-person outreach events and multimedia content such as the [Small Entity Compliance Guide](#) and [FAQs](#) to raise awareness about the Final Rule.

On Dec. 12, 2023, FinCEN updated its FAQs on BOI reporting requirements with **19 additional FAQs**, which include the following guidance that may be relevant to sophisticated entities subject to the CTA:

The Mechanics of the BOI Report

- Anyone whom the Reporting Company authorizes to act on its behalf may file a BOI report for the Reporting Company.
- A Reporting Company may not use a P.O. box as its current address.
- Reporting Companies are responsible for ensuring that an updated BOI report is filed with FinCEN within 30 days of a relevant change. Even if only one piece of information has changed (such as the company's legal name), all fields on the BOI report must be resubmitted as part of the update. A Reporting Company that filed its original BOI report using the fillable PDF version made available by FinCEN may update its saved copy and resubmit to FinCEN. If a reporting company used FinCEN's web-based application to submit the previous BOI report, it will need to submit a new report in its entirety. For this reason, companies should be sure to maintain readily accessible records of prior BOI reports (whether in-house or with a service provider).
- FinCEN does not require companies to report the type of interest a beneficial owner holds in the company. Therefore, if the type of ownership interest a beneficial owner holds in a Reporting Company changes, an updated BOI report is not required.

Compliance and Enforcement

- Willful violations of the BOI reporting requirements—including failing to file a BOI report, filing false information, or failing to correct or update previously reported BOI—may subject a person to civil penalties of up to \$500 for each day the violation continues and criminal penalties of up to two years imprisonment and a fine of up to \$10,000.
- Liability for willful CTA violations may extend to both individuals and corporate entities. Individuals may be liable if they caused the compliance failure. Examples include an individual who actually files false information, an individual who provides the filer with false information, or a beneficial owner or company applicant who refuses to provide required information or updates to a Reporting Company. FinCEN may also seek penalties against senior officers at the company at the time of the compliance failure. FinCEN defines the term “senior officers” to include, *inter alia*, general counsels.
- In FinCEN's view, Reporting Companies are responsible for ensuring the accuracy of the information they report, even if the Reporting Company obtains that information from another party. FinCEN did not further elaborate what steps it expects Reporting Companies to take to verify third-party information.
- FinCEN recommends that existing Reporting Companies engage with their beneficial owners to advise them of BOI reporting requirements, obtain required information, and consider putting in place mechanisms to ensure that beneficial owners will keep Reporting Companies apprised of changes in reported information.

Conclusion

As the Jan. 1, 2024, effective date draws near, FinCEN is expected to continue to provide guidance on compliance with the CTA. Although entities in existence before that effective date will have until Jan. 1, 2025, to submit BOI reports, Reporting Companies should not wait until the last minute to engage their beneficial owners and consider appropriate mechanisms to ensure they will achieve and maintain full compliance with the CTA.

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