

# The Corporate Transparency Act Takes Effect Jan. 1



On Jan. 1, 2024, a new federal law requiring many business owners to provide “beneficial ownership information (BOI)” takes effect. Among the information required to be released under the Corporate Transparency Act (CTA) include forms of reports filed with the Financial Crimes Enforcement Network (FinCEN). The FinCEN is a part of the U.S. Department of the Treasury and will oversee the reporting obligations and filed information, known as the Reporting Rule.

Enacted as part of a crackdown on illegal activities, such as money laundering, tax fraud, terrorist financing, and human and drug trafficking, the CTA aims to prevent criminals from hiding illegal property, cash or capital gains in shell companies here in the U.S. Thus, the primary targets are start-ups, small businesses and shell companies.

The Reporting Rule applies to new and existing corporations; limited liability companies, including S corps; limited partnerships; and other entities formed by a filing of a document with a secretary of state or similar authority under the laws of a state. The rule also applies to certain foreign entities registered to do business in the U.S. (collectively, “Reporting Companies”). The CTA does not apply to sole proprietorships or general partnerships.

There are 23 categories of entities exempt from reporting BOI to FinCEN, most of which apply to large businesses that are already subject to substantial regulation from the government. The exempted entities include securities and reporting issuers; governmental authorities; banks; credit unions; depository institution holding companies; money service businesses; securities, brokers and dealers; securities exchanges for clearing agencies; other Exchange Act registered entities; investment companies or investment advisors; venture capital fund advisors; insurance companies; state-licensed insurance producers; Commodity Exchange Act registered entities; accounting firms; public utilities; financial market utilities; pooled investment vehicles; certain tax-exempt entities; entities assisting a tax-exempt entity; large operating companies; subsidiaries of certain exempt entities; and inactive entity.

A large operating company is defined as an entity that: (1) employs more than 20 employees on a full-time basis in the U.S.; (2) filed U.S. federal income tax returns demonstrating \$5,000,000 in gross receipts or sales in the aggregate in the previous year; and (3) has an operating presence at a physical office within the U.S.

The Reporting Rule requires businesses to disclose information about the business, each beneficial owner and company applicant.

A “beneficial owner” of a Reporting Company is any individual who, directly or indirectly, exercises “substantial control” over the company or owns at least 25% of the ownership interest.

Examples of a beneficial owner include a person having the right to elect or cause the removal of an officer or director; a person having control over another person who is an officer or director; a person having approval rights; and a person having control over an intermediary entity that gives that person effective control over the Reporting Company. Additionally, instruments such as options, convertible debt, rights to purchase or subscribe for equity, etc., will be counted toward the 25% ownership threshold or be deemed to convey “substantial control,” thereby making the holder of the instrument a beneficial owner.

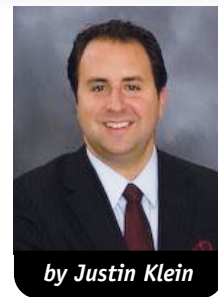
A “company applicant” is the individual who directly files the document that forms the entity or first registers a foreign entity to do business in the U.S. However, company applicant information is not required for entities formed before Jan. 1, 2024.

Reporting Companies must disclose in the BOI report the full legal name, trade name or “doing business as” name. In addition, the current address; jurisdiction in which it was first formed or registered in; and EIN, or taxpayer identification number, for each business must be disclosed.

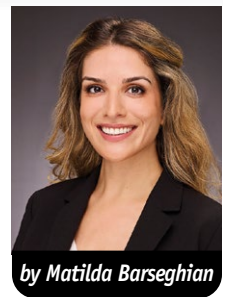
For each beneficial owner of the business and company applicant, the report also needs to include the full legal name; birthdate; address (for company applicant, residential or office address; for others, current residential address); and identifying number from a government-issued identification, such as a passport or driver’s license, along with an image of the identifying number and issuing jurisdiction.

Reporting Companies that have been created or registered to do business before Jan. 1, 2024, must file their initial BOI report by Jan. 1, 2025. Reporting Companies created or registered to do business after Jan. 1, 2024, will have 30 days after receiving notice of their company’s effective creation or registration to file their initial BOI reports.

BOI reports may be filed electronically directly through



by Justin Klein



by Matilda Barseghian

FinCEN's website (<https://www.fincen.gov/>). Failure to comply with the reporting requirements can lead to civil and criminal penalties, including a maximum civil penalty of \$500 per day (up to a maximum amount of \$10,000) and imprisonment for up to two years.

The information is entered into a database and members of the public will not have access to this information. There are only six types of entities able to request beneficial ownership information. These include federal agencies engaged in national security, intelligence and law enforcement; state law enforcement agencies (with a court order); U.S. Treasury Department; financial institutions (with consent of the Reporting Company); financial institution regulators; and foreign authorities requesting information through a U.S. agency.

With emerging concerns over privacy and security implications, as well as enforcing compliance, FinCEN is in the process of amending and developing rules that will govern the handling of and access to beneficial ownership information. However, it is unclear when these rules will be published.


For example, FinCEN is in the process of issuing a final rule that specifies the circumstances under which a Reporting Company may report an entity's FinCEN Identifier, which, after the initial BOI filing, may be used in place of the otherwise required beneficial ownership information or company applicants. FinCEN is also in the process of creating the forms Reporting Companies will use to report BOI to FinCEN as well as considering extensions of time for those businesses created after Jan. 1, 2024. In other words, FinCEN is considering amending the rule to require reports to be filed within 60 or 90 days, instead of the current 30-day requirement.

Other potential problems may include unintentional noncompliance in cases with multiple members of an entity. For example, if

an LLC has four members, either by way of substantial control or owning at least 25% ownership interest, and if one of those members refuses to comply with providing the required BOI, the Reporting Company will be penalized for noncompliance despite the remaining three members' cooperation.

One way to combat such unintentional noncompliance may be to include in new or amended operating agreements a provision stating every member of the LLC that either has substantial control or owns a 25% ownership interest or more must comply with the CTA's Reporting Rule and any request for information to be recorded as a beneficial owner. Consequently, if the member fails to comply, the member may be expelled. Similarly, new or amended operating agreements may include an indemnity provision for any harm incurred as a result of any noncompliance.

Other considerations in preparation for the CTA to take effect include a diligent review of the company's corporate structure and updating organizational flow charts, and developing an internal CTA compliance program.

Given the newness of the Reporting Rule and penalties for noncompliance, it is critical for business owners to keep abreast of how the rules related to CTA advance, particularly because FinCEN is considering multiple amendments to how the rule will play out moving forward. Most importantly, be prepared to timely report any required business ownership information. 

**Justin M. Klein** is a franchise and business attorney and a partner with the nationally recognized franchise law firm of Marks & Klein, which represents Planet Fitness® franchise operators throughout the United States and internationally. You can contact Klein at [justin@marksklein.com](mailto:justin@marksklein.com).



## CUSTOMIZED REAL ESTATE SERVICES

**Travis Alvarado**

[travis@retailregroup.com](mailto:travis@retailregroup.com)  
(832) 655-8215

**Kayla O'Connor**

[kayla@retailregroup.com](mailto:kayla@retailregroup.com)  
(831) 320-8234

### Real Estate Portfolio Services

- Lease Restructure & Renewal
- Remodel Capital Contribution
- Lease Termination
- Disposition & Sale Leasebacks

### Growth & Development Services

- Strategic Growth & Market Planning
- Build to Suit Development

You don't wait  
around for  
greatness to  
happen, you  
make it happen.

 Texas Capital



[texascapital.com](http://texascapital.com)

Member FDIC | NASDAQ-TCBI