



It Is Time: What You Need to Know Now about the Corporate Transparency Act

In early 2021, Congress, through the Anti-Money Laundering Act of 2020, established the Corporate Transparency Act (CTA), which requires, among other things, non-exempt business entities (reporting companies) to report certain personal information of its “beneficial owners” to the U.S. Treasury Department’s Financial Crimes Enforcement Network (FinCEN). The reported “beneficial ownership information” is to be maintained by FinCEN in a secure nonpublic database. Final rules implementing the reporting requirements of the CTA become effective on January 1, 2024.

Reporting Deadlines

Reporting companies formed before January 1, 2024, will be required to submit beneficial ownership information to FinCEN no later than December 31, 2024.

Reporting companies formed on or after January 1, 2024, and before January 1, 2025, will be required to submit beneficial ownership information and “company applicant” information to FinCEN within 90 days of receipt of notice of formation of the entity. This deadline was originally 30 days after receipt of notice of formation of the entity but on November 29, 2023, FinCEN issued a final rule changing the deadline from 30 days to 90 days.

Reporting companies created or registered on or after January 1, 2025, will be required to submit beneficial ownership information and “company applicant” information to FinCEN within 30 calendar days from receipt of notice of formation of the entity.

To the extent a reporting company's beneficial ownership information changes or if the entity no longer qualifies for an exemption, it must file an updated report (or initial report, in the case of an entity that is no longer exempt) with FinCEN within 30 calendar days of the change/loss of exemption. It is the responsibility of the reporting company, not its beneficial owners, to report the required information.

Reporting Companies

A reporting company is any entity that is (a) created by the filing of a document with the secretary of state or a similar office under the law of a state or Indian tribe or (b) formed under the laws of a foreign country and registered to do business in the U.S. by the filing of a document with a secretary of state or a similar office under the laws of a state or Indian tribe, and which is not exempt.

Exemptions

The CTA includes 23 exemptions from the definition of reporting company, including, but not limited to, large operating companies, certain tax-exempt entities, publicly traded companies, banks, credit unions, securities brokers or dealers, money services businesses, investment companies, investment advisers, insurance companies, accounting firms, public utilities, pooled investment vehicles, a subsidiary of certain exempt entities, and inactive entities.

A "large operating company" is any entity that (a) directly employs more than 20 employees on a full-time basis in the U.S.; (b) filed in the previous year a federal income tax or information return in the U.S. demonstrating more than \$5,000,000 in gross receipts or sales in the aggregate (on a consolidated basis, if applicable); and (c) has an operating presence at a physical office within the U.S. An entity can initially be exempt under the large operating company exemption but subsequently lose the exemption later if it fails to meet any of the exemption requirements.

Beneficial Owners

A reporting company is required to report to FinCEN the beneficial owner information of its beneficial owners. A beneficial owner is any natural person who, directly or indirectly, either (a) exercises "substantial control" over the reporting company or (b) owns or controls at least 25 percent of the ownership interests of the reporting

company.

Substantial Control

An individual exercises substantial control over a reporting company if such individual:

- Serves as a senior officer (i.e., any individual holding the position or exercising the authority of a CEO, President, CFO, General Counsel, COO or any other officer, regardless of official title, who performs a similar function) of such reporting company;
- Has authority over the appointment or removal of any senior officer or a majority of the board of directors (or similar body) of such reporting company;
- Directs, determines, or has substantial influence over important decisions made by such reporting company; or
- Has any other form of substantial control over such reporting company.

We suspect there will be significant debate going forward on (a) what constitutes “substantial influence over important decisions” and (b) whether an individual has “any other form of substantial control” over the company.

Ownership

An individual who owns or controls at least 25 percent of the “ownership interests” of a reporting company is a beneficial owner of such reporting company. Ownership interest is broadly construed to include any equity, stock, or similar interest (whether such interest confers voting rights or not), any capital or profit interest, any instrument convertible into ownership interest, any option to purchase or sell ownership interests, or “any other instrument, contract, arrangement, understanding, relationship, or mechanism used to establish ownership.”

There are exclusions of certain individuals from the definition of beneficial owner such as a minor child, individual acting as a nominee or custodian, or an employee acting solely as an employee whose substantial control is derived solely from the employment status of the employee (provided they are not a senior officer).

Company Applicant

In addition to information about beneficial owners, the CTA requires certain information be reported regarding the “company applicants” for those entities formed on or after January 1, 2024. There are two types of company applicants: (a) an individual who directly files the document that creates the entity (if a domestic reporting company) or registers the entity to do business in the U.S. (if a foreign reporting company), and (b) an individual who is primarily responsible for directing or controlling such filing. A company applicant may include an attorney, paralegal or an employee at a business formation service if they assist in the formation or filing of the entity. FinCEN only requires up to two individuals to report as company applicants even if more than two individuals meet the definition of a company applicant. It should be reiterated that the company applicant reporting requirement only applies to new companies formed on or after January 1, 2024. For entities formed before January 1, 2024, there is no reporting requirement for company applicants.

Information Required to be Reported

What information must a reporting company report regarding the company itself and its beneficial owners (the “beneficial ownership information”)?

- The reporting company must report its (a) full legal name; (b) any trade names or “doing business as” names; (c) principal place of business if located in the U.S., otherwise the primary business location in the U.S.; (d) jurisdiction of formation; and (e) the company’s taxpayer identification number.
- The reporting company must report the following information regarding its beneficial owners and, for entities formed or registered on or after January 1, 2024, its company applicants: (a) full legal name; (b) date of birth; (c) current address; (d) a unique identifying number for such individual from an unexpired driver’s license, U.S. passport, or other specified documents; and (e) a copy of the document from which such unique identification number was obtained.

Each reporting company and individual providing such information may obtain a unique FinCEN identifier which can be used to report in lieu of providing the aforementioned information each time they file a report.

Penalties

It is unlawful for any person to willfully provide (or attempt to provide) false or fraudulent beneficial ownership information or to willfully fail to report complete or updated beneficial ownership information. The CTA provides for civil and criminal penalties for such violations, including a civil penalty of up to \$500 per day and, a fine of not more than \$10,000 and/or imprisonment for up to two years.

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