

Corporate Transparency Act Becomes Operational

January 16, 2024

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The Wall Street Journal has referred to the Corporate Transparency Act (CTA) in a recent article as “The Coming Deluge for Small Business.” Some people believe that to be an understatement.

In 2021, Congress passed the CTA with bipartisan support. The CTA creates a new beneficial ownership information reporting requirement as part of the U.S. government's efforts to make it harder for bad actors to hide or benefit from their ill-gotten gains through shell companies or other opaque ownership structures. The U.K. and EU have similar laws.

The CTA became “operational” on January 1, 2024. A bill has been introduced in Congress to delay the effective date for one year because FinCEN, the operational arm of the U.S. Treasury that will be administering the CTA, is not ready. FinCEN has been promulgating rules almost daily to get ready for January 1, 2024. FinCEN's [Small Entity Compliance Guide](#) offers an invaluable source of information on these new reporting requirements. The Q&As have been updated several times recently. It is important to obtain the latest edition of the Q&As for guidance regarding how the CTA may affect you.

Among the CTA's priorities are:

- Corruption
- Cybercrime
- Terrorist Financing
- Fraud
- Transnational Criminal Organization Activity
- Drug Trafficking
- Human Trafficking

Reporting Companies

Companies required to report are called reporting companies. There are two types of reporting companies:

- *Domestic reporting companies:* corporations, limited liability companies, and any other entities created by the filing of a document with a secretary of state or any similar office in the United States.

- *Foreign reporting companies*: entities (including corporations and limited liability companies) formed under the law of a foreign country that have registered to do business in the United States by the filing of a document with a secretary of state or any similar office.
- As of now, trusts and estates are not required to report under the CTA.

Exemptions

The CTA also contains 23 exemptions which include:

- Securities Reporting Issuers-Sec. 12 or 15(d) of 1934 Act
- Large Operating Companies (20 or more full-time employees, with an operating presence in at a physical office in the U.S. and \$5 million in gross receipts or sales, not including foreign sales)
- Inactive entities

Beneficial Owners

Beneficial Owners of Reporting Companies are required to report under the CTA. A beneficial owner is an individual who either directly or indirectly: (1) exercises **substantial control** over the reporting company, or (2) owns or controls at least 25% of the reporting company's ownership interests.

When Do Companies Need to Report

- A reporting company created or registered to do business before January 1, 2024, will have until January 1, 2025 to file its initial beneficial ownership information (BOI) report.
- A reporting company created or registered on or after January 1, 2024, and before January 1, 2025, will have 90 calendar days after receiving notice of the company's creation or registration to file its initial BOI report. The 90-calendar day deadline runs from the earlier of: the time the company receives actual notice that its creation or registration is effective, or after a secretary of state or similar office provides public notice of its creation or registration.
- Reporting companies created or registered on or after January 1, 2025, will have 30 calendar days from actual or public notice that the company's creation or registration is effective to file their initial BOI reports with FinCEN.
- A parent company cannot file a single report on behalf of a group of companies.

If there is **any change** to the required information about the company or its beneficial owners in a previously filed BOI report, the company must file an updated report no later than 30 days after the date of the change.

Who Can Access Information That Is Reported?

FinCEN will permit Federal, State, local, and Tribal officials, as well as certain foreign officials who submit a request through a U.S. Federal government agency, to obtain beneficial ownership information for authorized activities related to national security, intelligence, and law enforcement. Financial institutions will also have access to beneficial ownership information in certain circumstances, with the consent of the reporting company. Those financial institutions' regulators will also have access to beneficial ownership information as part of their regulatory supervision of the financial institutions.

On December 22, 2023, FinCEN published regulations regarding "Access and Safeguards" of Beneficial Ownership Information, that will govern access to and handling of beneficial ownership information. Beneficial ownership information reported to FinCEN will be stored in a secure, non-public database using rigorous information security methods and

controls typically used by the Federal government to protect non-classified, yet sensitive information systems at the highest security level. FinCEN will work closely with those authorized to access beneficial ownership information to ensure that they understand their roles and responsibilities so that the reported information is used only for authorized purposes and handled in a way that protects its security and confidentiality. A reporting company's failure to comply with the CTA can result in the imposition of civil and criminal penalties of **\$500 per day**

In addition, it would appear that some states are also gearing up to impose disclosure requirements on business entities. As of this writing, New York Governor Hochul is set to sign into law a bill that would require the disclosure of Limited Liability Company beneficial owners to New York state. However, the disclosed information will not be made publicly available.

To learn more about the Corporate Transparency Act, check out our on-demand webinar “7 Things to Know About the Corporate Transparency Act.”