

Navigating the Corporate Transparency Act: Compliance Essentials for Businesses

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Beginning next year, the Corporate Transparency Act (“CTA”) will require most smaller companies to report information regarding their beneficial owners to the Financial Crimes Enforcement Network (“FinCEN”). Reporting companies formed after January 1, 2024, will have 30 days after formation to report this information, and those formed prior to 2024 will have until January 1, 2025. The CTA applies to domestic and foreign entities that are formed or registered to do business in the U.S. The purpose of the CTA is to make it harder for bad actors to use shell companies or other opaque ownership structures for illicit activities. This client alert is a high-level summary of some of the requirements of the Corporate Transparency Act and should not be relied on as legal advice.

Reporting Company

The new law imposes reporting obligations on “Reporting Companies,” which include corporations, limited liability companies, and any other similar entity formed or registered to do business in any U.S. state, unless the company qualifies for an exemption. The most notable exemption is for “Large Operating Companies,” which are companies with (1) more than 20 full time employees, (2) more than \$5 million in gross revenue from U.S. sources, and (3) a physical presence in the U.S.

Beneficial Owners

A Reporting Company must report detailed information about each of its “Beneficial Owners,” which includes any individual who, directly or indirectly, owns at least 25% of the Reporting Company, or otherwise exercises substantial control over the Reporting Company. Executive officers, managers, and directors of a Reporting Company will generally be treated as Beneficial Owners due to their ability to control the Reporting Company. Reporting Companies that are owned or controlled by other entities will have to look through those entities and report the human that ultimately controls at least 25% of the ownership interests, unless the entity is itself specifically exempt from the reporting requirements.

Company Applicant

“Company Applicants” who form a Reporting Company after December 31, 2023, are also required to furnish information about themselves to FinCEN. Company Applicants are the persons who form the Reporting Company, including both the individual who directly files the formation or registration document and the individual who is primarily responsible for directing the filing. For example, if a law firm forms a new company for a client, both the paralegal filing the documents and the lawyer directing the paralegal to make the filing will be Company Applicants.

Information to be Reported

A Reporting Company will be required to provide information about itself, its Beneficial Owners, and Company Applicants. Information required about the Reporting Company includes its:

- full legal name and any trade name;
- current address;
- jurisdiction of registration or formation; and
- Taxpayer Identification Number.

Information Required about Beneficial Owners and Company Applicants includes:

- full legal name;
- date of birth;
- current address; and
- unique identification number from an acceptable form of identification, such as a passport or driver's license, and a copy of the document.

Use of Beneficial Ownership Information

FinCEN is required to maintain beneficial ownership information on a “secure, nonpublic database.” Nevertheless, FinCEN may be required to share Beneficial Owner information with other government agencies engaged in national security, intelligence, or law enforcement, including under certain circumstances, state, local and foreign agencies.

Ongoing Reporting Obligations

Reporting Companies will have an ongoing obligation to ensure their reports remain complete and correct. For example, changes in beneficial ownership information will require the Reporting Company to file an amendment within 30 days of the change.

Penalties for Violating the CTA

Failure to meet the reporting requirements can result in civil or criminal penalties including a fine of up to \$10,000 and imprisonment for up to two years.

What to do Now

Reporting Companies formed prior to January 1, 2024, should begin collecting the required reporting information from their Beneficial Owners in anticipation of having to report that information next year. Company Applicants and others should put policies and procedures in place to collect beneficial ownership information prior to forming any new Reporting Companies. We recommend that you contact your attorney or other professional who is familiar with the reporting requirements to ensure that you are CTA compliant prior to the January 1, 2024 deadline.

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