



***Action Alert**

The Corporate Transparency Act (CTA)

Starting January 1, 2024, a significant number of businesses will be required to comply with the Corporate Transparency Act (CTA). The CTA was enacted into law as part of the National Defense Authorization Act for Fiscal Year 2021. The CTA requires the disclosure of the beneficial ownership information (BOI) by specific entities defined in the act. The CTA is not a part of the Internal Revenue Code, it is a part of the Bank Secrecy Act, a federal law that requires taxpayers to keep records of, and file reports on, certain specified financial activities. Final regulations implementing the CTA were issued in September 2022. Under the CTA, BOI reports will not be filed with the IRS, but with the Treasury Department's Financial Crimes Enforcement Network (FinCEN).

Note: A U.S. District Court has issued an injunction against enforcement of the CTA. However, FinCEN has said it will continue to implement the law. As of April, 2024, reporting companies (see below) are still required to comply, though enforcement is pending further litigation.

Who is required to report?

The CTA is not intended to require all companies to comply with its reporting requirements. Historically, such laws have focused on larger companies and provided exceptions to the smaller ones. The CTA, however, is focused specifically on the estimated 27 million small businesses that are considered "non-employer firms" with zero employees. These domestic entities and foreign entities meeting certain requirements are defined as reporting companies.

A domestic entity may be a reporting company if it is a corporation or a limited liability company (LLC) created by filing a document with a secretary of state (or similar office) of a state or Indian tribe. A foreign entity may be a reporting company if it is a corporation or LLC formed under the law of a foreign country that is registered to do business in any state or tribal jurisdiction by filing a document with a secretary of state or any similar office. The CTA includes the phrase "or other entity" in the list of entities that may be considered reporting companies. The regulations are unclear as to whether trusts and general partnerships that are created by operation of law without the filing of a formation document may be considered an "other entity" and therefore be subject to the beneficial ownership information reporting requirements.

Who is NOT required to report?

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Who is a beneficial owner?

A beneficial owner is defined under the CTA as any individual who, directly or indirectly, either:

- Exercises substantial control over a domestic or foreign reporting company, or
- Owns or controls at least 25% of the ownership interests of a domestic or foreign reporting company.
- Ownership interests include those categorized as capital interests or profits interests as well as equity convertible through voting rights. The regulations further define the terms “substantial control” and “ownership interest.”

Who is NOT a beneficial owner?

The CTA excludes from the definition of beneficial owner those who are:

- Minor children (provided the information for their parent or guardian is reported);
- Individuals acting as nominee, intermediary, custodian, or agent on behalf of another individual;
- Individuals acting solely as an employee of a reporting company (in specified circumstances);
- Individuals whose only interest in a reporting company is a future interest through rights of inheritance; and
- A creditor of a reporting company.

What information is reported?

The CTA requires reporting companies to report their full business name, trade name, or doing business as (DBA) name, business address, state or Tribal jurisdiction of formation, and their IRS taxpayer identification number (TIN). Additionally, the CTA requires companies to report information on the beneficial owners of the entity, including the owner’s name, date of birth, address, and a unique identifier number from a recognized issuing jurisdiction as well as a photo of the document containing that unique number. Government-issued identification such as a passport or a driver’s license would satisfy the requirement.

When must the information be reported?

The CTA requires reporting companies that were in existence prior to the January 1, 2024, effective date to report the required information to FinCEN on or before January 1, 2025. New entities created or registered after the effective date but before January 1, 2025, must file within 90 days from the day they receive notice of their formation or registration to report the required information to FinCEN. New entities created or registered after January 1, 2025, must file within 30 days from the day they receive notice of their formation or registration to report the required information to FinCEN.

Are there continuing reporting requirements?

If there are any changes to previously reported information about the reporting company itself or its beneficial owners, the reporting company is required to file an updated information report within 30 days of such change. The regulations are unclear as to what constitutes a change to previously reported information. It has been suggested that changes to a beneficial owner's information or the addition or removal of a beneficial owner will constitute a change that should be reported. However, the regulations are unclear as to whether changes like a change in the percentage ownership interest of a beneficial owner are sufficient to require an updated report.

Are there penalty provisions in the CTA?

The CTA imposes penalties on parties or reporting companies for reporting incomplete or incorrect information which can result in daily fines of up to \$500 per day until the violation is corrected. Additionally, criminal penalties may be imposed in cases of willful non-compliance or when the non-compliance is accompanied by fraudulent intent. Criminal penalties may include fines of up to \$10,000 and imprisonment for as much as two years. The CTA makes unlawful the disclosure of BOI and imposes criminal fines of \$500 per day for such disclosure up to \$250,000 in the aggregate and up to 10 years in prison.

There is no clear indication that any compliance failure under the act would lead to a suspension of the company's ability to conduct business or limit the company's ability to commence an action in federal court. Finally, the CTA provides a safe harbor rule for any person that submits inaccurate beneficial ownership information if that person:

- Didn't know it was inaccurate,
- Was not trying to evade the reporting requirement, and
- Corrected the information no later than 90 days after the initial report was submitted.

What are the next steps?

FinCEN will begin accepting beneficial ownership information reports from reporting companies that are not exempt on January 1, 2024, the effective date of the reporting requirement. The information above is preliminary and it is possible that material changes may occur in our understanding of the CTA's implementation and requirements.

In conclusion

The Corporate Transparency Act establishes a comprehensive framework of requirements that will impact small businesses. The complexities and nuances of the Act, coupled with the severe penalties for non-compliance, underscore the importance of understanding its obligations. It is important that guidance and counsel is sought from qualified financial professionals who can provide informed interpretations of the Act and its regulations, ensure accurate reporting, and aid in the timely response to any changes in beneficial ownership information.

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