



THE CORPORATE TRANSPARENCY ACT: Legislative Highlights

Summary

The Corporate Transparency Act ("CTA") was enacted on Jan. 1, 2021 as part of the National Defense Authorization Act. The CTA is intended to provide transparency into business entities and assist law enforcement efforts to counter money laundering, terrorism, and other illegal activities. The CTA requires "reporting companies" to provide FinCEN with information about individuals who are: (i) the "beneficial owners" of the entity and (ii) "company applicants" who have filed an application to create the entity or register it to do business.

- The CTA will become effective January 1, 2024.
- Most small corporations, limited partnerships and LLCs-including those established for tax or estate planning purposes-will be required to comply.
- It requires certain businesses to report certain information to the Financial Crimes Enforcement Network ("FinCEN") for persons with "substantial control" over the business or 25 percent or more of the equity in the business, as well as information about the persons who form business entities.
- Existing businesses have until January 1, 2025 to file.
- For entities formed in 2024 or later, the company will have 30 days to file.
- There are fines and possible jail time for noncompliance with the CTA's requirements.

Covered Businesses

The CTA impacts "reporting companies," which include corporations, limited liability companies, limited partnerships, business trusts, and other similar entities created by filing a document with a secretary of state or similar office in any state or territory or with a federally recognized tribal government, or that is formed under the laws of a foreign country and registered to do business in the United States.

There are twenty-three categories of entities which are exempt from reporting, including public companies, registered broker-dealers, certain investment companies, banks, money-transmitting businesses, commodity trading companies, pooled investment vehicles, 501(c) tax-exempt entities, inactive business entities and insurance companies.

Additionally, an entity is exempt if it: (i) is owned or controlled by an exempt entity (with some limited exceptions), or (ii) (A) has more than 20 full-time employees in the United States, (B) reported more than \$5,000,000 in gross receipts or sales (including the receipts or sales of subsidiaries and other entities through which such entity operates) on its previous year U.S. federal income tax return; and (C) operates at a physical office within the U.S.



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Who qualifies as a "beneficial owner"?

A beneficial owner is any individual who directly or indirectly: (i) exercises "substantial control" over the reporting company, or (ii) owns or controls at least 25% of the "ownership interests" of the reporting company. This will include all members of the board of directors or board of managers, as well as the CEO, President, Chief Operating Officer, Chief Financial Officer, and the General Counsel of a reporting company.

What qualifies as an "ownership interest"?

An ownership interest includes typical equity interests such as stock, joint venture interests, LLC or partnership interests, and other similar instruments. The rules go further, however, to include instruments that may be non-voting or that carry the right to convert or purchase equity securities or similar interests in the future, including capital or profit interests, convertible instruments, and rights or privileges to acquire equity, capital or other interests in a reporting company (including put rights, call rights, options and other contractual rights).

Thus, both individuals who currently hold equity securities and those who have the potential to acquire equity securities in the future are treated as beneficial owners if the potential interest meets the required threshold amounts.

Finally, there is a catch-all category that includes individuals that may own or control an ownership interest indirectly such as through joint ownership, through an intermediary or custodian, through a trust or through ownership of an intermediary entity.

Who qualifies as a "company applicant"?

A company applicant is: (i) the individual who directly files the document that creates or first registers the reporting company and (ii) the individual who is primarily responsible for directing or controlling the filing of the document. A reporting company will not have more than two company applicants.

What information is required to be reported?

A reporting company is required to report: (i) its legal name and any trade or fictitious business names; (ii) its address; (iii) the jurisdiction in which it was formed or first registered; and (iv) its taxpayer identification number.



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For each beneficial owner and company applicant, the reporting company is required to report the individual's: (i) legal name; (ii) date of birth; (iii) address (in most cases, a residential address); and (iv) an identifying number from the individual's driver's license, passport or other approved document, as well as an image of that document.

When do reports need to be filed?

Reporting companies in existence on January 1, 2024, will have until January 1, 2025 to file their initial report with FinCEN. Reporting companies formed on or after January 1, 2024, will have thirty days from formation to file their initial report.

If there is a change to previously reported information or a mistake is discovered in a previously filed report, the reporting company must file an updated or corrected report with FinCEN within 30 days.

What are the penalties for noncompliance?

Willful violations of the CTA can result in civil penalties of up to \$500 per day and criminal penalties of up to \$10,000 and/or two years in prison.

DISCLAIMER: THIS DOCUMENT IS INTENDED TO PROVIDE YOU WITH GENERAL INFORMATION REGARDING THE CORPORATE TRANSPARENCY ACT AND IS NOT INTENDED TO PROVIDE LEGAL ADVICE.

If your company is an existing client of the firm and may be a reporting company or has questions about the application of the CTA, please note that the firm's current engagement DOES NOT INCLUDE legal advice regarding your company's reporting obligations or compliance with the CTA. Any legal advice regarding reporting obligations or application of the CTA will require a new engagement with the firm.



THE CORPORATE TRANSPARENCY ACT: Client Checklist

	Action Item	Status
1	Determine if your company is a reporting company subject to the CTA: <ul style="list-style-type: none">- Unless exempt, all entities must file Beneficial Owner Reports<ol style="list-style-type: none">1. Exemptions include, but are not limited to:<ol style="list-style-type: none">a. Companies that employ more than 20 full-time employees, have over \$5 million in gross receipts on their most recent income tax returns, <u>and</u> have an operating presence at physical offices in the USb. Companies that are heavily regulated or publicly tradedc. Churches, charities, and not-for-profit organizationsd. Dormant entities (not engaged in active business and have no assets)- If initially exempt, but exemption status changes, you then can become a reporting company subject to the CTA	
2	Mark calendar with due date for filing initial report	
3	Identify and generate list of beneficial owners	
4	Compile company identifying information: Complete Name Current Address Tax ID Number Jurisdiction of formation	
5	Compile personal identifying information, or FinCen number, for all beneficial owners and company applicant (when applicable): Names Dates of birth Current Addresses Driver's license or Passport number Copy of Driver's license or Passport	
6	File Beneficial Owner Report	
7	Appoint a compliance officer to keep track of any changes in the above company or beneficial owner information	
8	Establish a process for ongoing monitoring and reporting of changes in ownership or control or personal information within 30 days of such change	
9	Train all relevant employees on the requirements of the CTA to ensure they are aware of the law and responsibilities for compliance	
10	Keep detailed records of all beneficial owner information and any compliance activities, including due diligence efforts, to demonstrate compliance with the CTA	
11	Dissolve or merge entities that are inactive or not being used	