

New Corporate Transparency Act Disclosure Requirements Set For 2024

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Highlights

The Corporate Transparency Act, will impose new significant reporting requirements for many U.S. companies starting in 2024

Many companies will be required to report and regularly update beneficial ownership information they may not currently possess

Companies will need to put in place policies and procedures and likely amend their governing documents to ensure compliance

In December 2020, Congress passed the Corporate Transparency Act (CTA) as part of the National Defense Authorization Act. According to the Financial Crimes Enforcement Network (FinCEN), the purpose of the CTA is to “better enable critical national security, intelligence, and law enforcement efforts to counter money laundering, the financing of terrorism, and other illicit activity” by [creating a federal framework](#) for reporting, storing, and disclosing beneficial ownership information of “reporting companies.”

While the CTA was ostensibly targeted to foreign-owned companies, domestic companies – particularly small businesses – who meet the broad definition of reporting company will be affected by the CTA’s disclosure provision. The CTA takes effect on Jan. 1, 2024 – and companies should consider preparing now.

Compliance with the reporting requirements depends on the formation date of each reporting company. For entities formed prior to Jan. 1, 2024, reports must be filed no later Jan. 1, 2025. If there is a change to the information previously submitted to FinCEN, an entity must file an updated report within 30 calendar days of the change occurring. The same applies for any situations where a reporting company becomes aware of an inaccuracy in a report.

For entities formed on or after Jan. 1, 2024, reports must be filed within 30 calendar days of when it

receives actual notice that its creation has become effective or when the secretary of state or similar office provides public notice of its formation, whichever occurs first.

What is a “Reporting Company?”

Under the CTA, a reporting company is defined as a corporation, a limited liability company, or other entity that is 1) formed by filing documents with a secretary of state or similar office of a state or Indian tribe or 2) formed under the law of a foreign country and registered to do business in the United States.

FinCEN has provided an extensive list of entities exempted to the term “reporting company.” These exceptions include:

- Publicly traded companies
- Banks
- Credit unions
- Governmental entities
- Insurance companies operating in the U.S.
- Securities brokers
- Public utility companies
- Certain investment advisers
- Venture capital fund advisers
- Accounting firms
- Pooled investment vehicles
- Inactive entities not owned by a foreign person
- Tax-exempt entities (such as nonprofits, political organizations, and certain trusts)
- Subsidiaries of exempt entities
- Entities that employ more than 20 employees, operate at a physical office in the United States, and filed federal tax returns demonstrating more than \$5 million in gross receipts or sales

Even with the exemptions, tens of millions of entities will be required to file beneficial ownership reports with FinCEN. The filing requirements will affect a broad range of entities, including but not limited to, 1) entities that own real estate assets, 2) entities established by private fund managers that do not meet exemptions related to investment advisers and pooled investment vehicles, 3) individual

and family office investment vehicles, and 4) smaller private companies and joint ventures that are not exempt.

What is Required to Be Reported and When?

Reporting companies will be required starting in 2024 to deliver to FinCEN a report containing the following information about the reporting company:

- Entity's full legal name
- Trade names
- A complete current address
- The jurisdiction it was formed in or jurisdiction in which a foreign company first registers
- Internal Revenue Service Taxpayer Identification Number and Employer Identification Number

More notably, reporting companies must also furnish the following information to FinCEN about each beneficial owner and company applicant of the reporting company:

- Full legal name
- Date of birth
- Current business or residential address
- A unique identifying number from an acceptable identification document (i.e., passport, driver's license, etc.) or FinCEN identifier

The CTA defines "beneficial owner" as an individual, who directly or indirectly, exercises substantial control over the reporting company or owns or controls at least 25 percent of the ownership interests of the reporting company. An individual exercises "substantial control" over an entity if the individual 1) serves as a senior officer, 2) has authority over the appointment or removal of a senior officer or a majority of the board of directors, or 3) directs, determines, or has substantial influence over important business decisions.

The CTA also excludes certain individual and entities from the term "beneficial owner," including minor children, individuals acting as agents, employees, individuals with a future inherited interest, and creditors. However, the parents of minor children – who would meet the beneficial owner standard but for the exception noted – must have their information reported, according to the CTA.

A "company applicant" is an individual who directly files the formation documents for the reporting company.

Violations and Penalties

A false, fraudulent, or incomplete beneficial ownership report constitutes a reporting violation only if it is the willful act of an individual. Failure to comply with the CTA reporting requirements can lead to significant civil and criminal penalties, including a maximum civil penalty of \$500 per day (up to \$10,000) and imprisonment for up to two years.

Who Has Access to the Reports?

FinCEN is required to maintain the information in these reports in a confidential, secure, and non-public database. Under the CTA, beneficial ownership information is neither publicly accessible nor subject to requests under the Freedom of Information Act. However, the CTA authorizes FinCEN to disclose beneficial ownership information to a) federal agencies engaged in national security, intelligence, or law enforcement, b) state, local, or tribal law enforcement for purposes of criminal or civil investigations, c) federal agency issued in response to a request for assistance to a foreign investigation or prosecution, d) financial institutions requesting this information, with the consent of the reporting company, to facilitate compliance with customer due diligence regulations, and e) federal functional regulators or other appropriate regulatory agencies.

FinCEN is currently engaged in the rulemaking process for rules on protection and confidentiality regarding these reports.

Key Takeaways

The CTA is dramatically going to change the ways U.S. companies form and govern themselves as companies and investors will have to account for information in ways like never before. In order to properly comply with the CTA, companies should plan to 1) comply at the time of formation, 2) have a compliance policy in place, (3) amend governing documents to account for their compliance policy, and 4) consider how compliance may affect material transactions.

Because reporting companies formed after Jan. 1, 2024, must report beneficial ownership information within 30 calendar days of formation, reporting companies will need to gather additional beneficial ownership information at the time of formation.

Existing companies should start gathering beneficial ownership information and should consider adopting a compliance policy and incorporate the policy into its governing documents (i.e., shareholder agreements or operating agreements) as a contractual duty that binds shareholders, members, and managers of the company to provide and update the necessary information.

Even companies who are presently exempt from the requirements should consider implementing policies and amending their governing documents as the facts and circumstances which forms the basis for their exemption may change (for example, they could drop below the relevant employee or revenue thresholds in a particular period).

As companies begin to include compliance clauses into their governing documents, parties likely will be required by agreements and transactions to represent to the opposing side that their CTA beneficial ownership reports are true, accurate, and have been timely filed. This is especially true for agreements with banks, as financial institutions are an authorized recipient of beneficial ownership reports if consent is given by the reporting company.

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