

Corporate Transparency Act Reporting Requirements: What Steps Can Companies Take Now?

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Congress passed the Corporate Transparency Act (the **CTA**) in January 2021 to provide law enforcement agencies with information that may be used to combat financial crime and fraud. The CTA requires certain legal entities (each, a “**reporting company**”) to report, if no exemption is available, specific information about themselves, certain of their individual owners and managers (“**beneficial owners**”), and certain individuals involved in their formation (“**company applicants**”) to the Financial Crimes Enforcement Network (**FinCEN**) of the U.S. Department of Treasury.



Reporting companies formed or registered in the U.S. on or after January 1, 2024 that do not qualify for an exemption will need to comply with the new CTA reporting requirements promptly upon formation or registration, while non-exempt reporting companies in existence before January 1, 2024 will

need to file an initial report on or before January 1, 2025. Reporting companies will be required to file updated reports within 30 days of any change to the reported information and must promptly correct any inaccuracies in their disclosure to avoid penalties.

Fines of \$500 per day can be levied for failure to timely comply with the new reporting requirements. Criminal penalties (including imprisonment) are also available to regulators in certain circumstances, including where a person willfully fails to file the required reports.

Existing companies should familiarize themselves with the CTA's reporting requirements and formulate a plan to facilitate compliance. Actionable steps that businesses can take now include the following:

1. Get organized.

Businesses should determine whether their legal entities will be required to file reports with FinCEN under the CTA and, if so, what information they will need to collect in order to comply. This will require a review of your legal entity structure chart, current capitalization table(s), governing documents, and equity and debt documents. While ownership and control may be relatively straightforward for certain companies, others will require a more detailed analysis. Each legal entity within an affiliated group must be assessed.

Keep in mind that there is no exemption for holding companies. Many private businesses are legally structured with one or more operating entities under a holding company. If applicable, careful attention should be given to the requirements of the large operating entity exemption for assessing its availability.

2. Make a plan for filing your initial BOI Report, if necessary.

If your business is subject to BOI reporting requirements, you will need to consider how to collect and handle the information from direct and indirect owners, senior officers and others in control of the business. This task may present certain practical challenges that you

should be ready to address, including:

Such individuals may be reluctant to provide their personal information as part of a BOI Report on privacy grounds. There is currently no statutory or regulatory relief for failure to file a complete BOI report on the grounds that one or more required persons refused to provide the required disclosure, so their failure to cooperate will prevent the reporting company from complying with the CTA. The company may wish to consider what actions it is willing and able to take to compel compliance, including repurchase of equity or termination and removal of noncompliant persons.

Such individuals may be willing to provide disclosure to FinCEN but not to the reporting company itself. FinCEN will allow individuals to provide their disclosure directly to FinCEN and obtain a unique FinCEN identifier. The individual may then provide the FinCEN identifier to the reporting company in lieu of the underlying information. With respect to changes to such individual's information, the burden shifts from the company to the individual to file any updated reports.

Certain of the information required to be included in BOI Reports may constitute personal identifiable information (“_____”

The Beneficial Ownership Secure System (BOSS), which FinCEN is creating to collect and store BOI Reports, will be accessible by reporting companies; however, third-party service providers may help facilitate compliance by allowing required persons to provide their information separately from the company filing and by storing their personal information. You may wish to consider whether the additional features provided by these service providers will help your company in its compliance efforts.

3. _____

You will need to continuously monitor for changes that may trigger reporting requirements. Reporting companies will need to promptly report any change in information reported to FinCEN, including

changes in beneficial ownership and control. Beneficial owners will need to provide updates to their names, addresses, or filed government documents. Companies with complex beneficial ownership structures may want to designate a CTA compliance officer who can monitor these issues and provide the necessary training to individuals whose cooperation will be required to facilitate compliance.

4. _____

There is a limited exemption from BOI reporting requirements for inactive entities, but entities do not qualify if, among other things, they (i) were formed on or after January 1, 2020, (ii) are owned in whole or in part by a foreign person, or (iii) hold assets or equity interests. Unless this or another exemption from BOI reporting requirements applies, you may wish to consider dissolving entities that you do not intend to use in the future to avoid incurring unnecessary costs under the CTA.

5. _____

Entities formed or registered in the U.S. prior to January 1, 2024 will not be required to file an initial BOI Report until January 1, 2025, and they will not be required to disclose their company applicants. Therefore, if you intend to engage in a transaction or restructuring, or any new business that will involve the creation of one or more new entities, you may wish to form those entities before January 1, 2024.

6. _____

To comply with BOI reporting requirements, reporting companies will need to collect and report up-to-date information with respect to each of their beneficial owners. Reporting companies should consider amending their shareholder agreements, operating agreements and/or other governance documents to require affirmative cooperation with respect to CTA compliance obligations. Recourse for any failure to provide or update reporting information should also be considered, including by way of indemnification.