

The Corporate Transparency Act: A New Federal Law with Broad Implications Now in Effect *What Does This Mean for Me and My Business?*

In 2021, Congress passed the [Corporate Transparency Act, 31 U.S.C. 5336 \("CTA"\)](#), which established certain required information filings with the [U.S. Treasury Financial Crimes Enforcement Network \("FinCEN"\)](#). The purpose of the CTA is to create a national database of companies in the U.S. that identifies the people behind the companies (both owners and those in control of the entities) to identify, prevent, and punish criminals and criminal networks that participate in money laundering and other financial crimes. While the new federal database will not be of public record, it will be accessible to a variety of federal law enforcement and other agencies (including the IRS). As of January 1, 2024, a substantial number of business entities are required to report information regarding their “beneficial owners” to FinCEN.

Who is subject to the CTA and who is exempt?

Any entity with state-filed formation documents (primarily, but not limited to corporations, limited liability companies (LLCs), and limited partnerships) which does not qualify for an exemption from the CTA’s reporting requirements (discussed below) needs to file a beneficial ownership information report (each a “Reporting Company”). Even an entity which has only one owner and is ignored for federal income tax purposes (such as a single-member LLC or an LLC wholly owned by a married couple), must file reports with FinCEN. Consequently, this new law affects virtually all small family businesses, including LLCs and other entities designed only to hold real estate. There are, however, a few limited exemptions, the most important of which are listed below:

- *Large operating companies* (companies with 20+ full time employees, a physical office/operating presence within the U.S., and which have filed a federal income tax or information return in the U.S. demonstrating more than \$5,000,000 in gross receipts/sales from within the U.S.)
- *Exempt Subsidiaries* (companies controlled or wholly owned, directly or indirectly, by certain exempt entities)
- *FinCEN/SEC Entities* (financial institutions or certain issuers of securities in heavily regulated industries (e.g., banks, credit unions, broker-dealers, money services businesses registered with FinCEN, and issuers registered with the U.S. Securities and Exchange Commission))
- *Tax-exempt 501(c) entities*
- *Inactive entities* (companies that existed before January 1, 2020, and which are (i) not engaged in active business, (ii) not owned by a foreign person, (iii) have not had a change in ownership in the last 12 months, (iv) have not sent or received funds greater than \$1,000 in the last 12 months, and (v) do not hold any assets)

**Note that the above exemptions are not permanent. If an entity initially qualifies for one of the above exemptions but subsequently falls short, it must then file a beneficial ownership information report.*

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What are the basic requirements?

Entities subject to the CTA, meaning entities that do not qualify for an exemption from the CTA’s reporting requirements (each, a Reporting Company as described above), the beneficial owners thereof, and the individuals that formed such entity, are required to complete and submit information reports to FinCEN as described below.

Each Reporting Company is required to provide the following:

- Full legal company name;
- Any trade name or assumed name (DBA) owned by the Reporting Company;
- Current address (street address only; P.O. boxes not allowed);
- Jurisdiction of formation; and
- Federal taxpayer identification number (i.e., Federal EIN).

Each beneficial owner of a Reporting Company is required to provide the following:

- Full legal name;
- Date of birth;
- Current residential or business address (street address only; P.O. boxes not allowed); and
- An image including the unique identifying number of either a current US passport, driver’s license, or state, local or tribal ID.

OR

- A FinCEN identifier number (“*FinCEN ID*”); FinCEN permits individuals to obtain “FinCEN identifiers”, which are unique identification numbers that can be used in lieu of the aforementioned information. [*Click here to obtain a FinCEN ID.*](#)

Similar information is required from the Reporting Company Applicant, meaning the individual who files, or is responsible for filing, the document creating the entity (e.g., the articles or certificate of organization or incorporation); however, Reporting Company Applicant information is only required to be reported for entities formed after January 1, 2024.

What are the deadlines for filing?

- All entities formed prior to January 1, 2024, have until January 1, 2025, to report;
- All entities formed after January 1, 2024, must submit their reports within 90 days after the entity is formed in 2024; and
- All entities formed after January 1, 2025, must submit their reports within 30 days after the entity is formed.

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How do we determine who qualifies as a Reporting Company beneficial owner?

Under FinCEN’s regulations, a beneficial owner is any individual who directly or indirectly (a) exercises substantial control over the Reporting Company, or (b) owns or controls at least 25% of the ownership interests in the Reporting Company. An individual is deemed to be a beneficial owner by virtue of exercising substantial control over an entity where such individual:

- (i) serves as a senior officer;
- (ii) directly or indirectly, has authority to appoint or remove a senior officer or a majority of the board of directors (or similar body); and/or
- (iii) directly or indirectly, otherwise directs, determines, or has substantial influence over important decisions made by the entity.

**Note that the definition of “beneficial owner” is intentionally broad, and it is likely best to err on the side of over-reporting. All Reporting Companies will have at least one beneficial owner.*

What happens if previously reported information changes?

The initial FinCEN report only needs to be filed once for each Reporting Company but entities have an ongoing duty to update their filings within 30 days after (a) a change to previously reported information, or (b) attainment of knowledge that a previous report contained inaccurate information. Examples of occurrences which would trigger the need for an updated filing include, without limitation, (i) a change in the ownership, management or control of the Reporting Company, (ii) a change in the address of a beneficial owner or manager, and (iii) a change in the name of a beneficial owner or manager (e.g., due to marriage, etc.).

Are there penalties for failure to comply?

Willful failure to timely and completely report and update beneficial ownership information may result in civil penalties of up to \$500 for each day that the violation continues, or criminal penalties, including imprisonment for up to two years and/or a fine of up to \$10,000. The penalties may apply to both the Reporting Company and the individual(s) causing the violation by refusing to provide information or knowingly providing false information.

Links to Additional Resources:

- [FinCEN published a Small Entity Compliance Guide](#)
- [FinCEN has prepared the following Frequently Asked Questions \(FAQs\) in response to inquiries received relating to the Beneficial Ownership Information Reporting Rule](#)



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- Laws:
 - o [Corporate Transparency Act, 31 U.S.C. 5336 \("CTA"\)](#)
 - o [Beneficial ownership information reporting requirements \(31 U.S.C. 5336\)](#)

 - [Regulations: Excerpt from Beneficial Ownership information Reporting Requirements Final Rule \(31 CFR 1010.380\)](#)
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Please note that the CTA is under legal challenge, however, at this time the statute remains in effect as do the compliance obligations thereunder.