



What You Need to Know About the Corporate Transparency Act

Article

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Initially passed on January 1, 2021, to enhance corporate transparency in the United States, the Corporate Transparency Act (CTA) requires “reporting companies” to report certain beneficial ownership information to the U.S. Treasury Department’s Financial Crimes Enforcement Network (FinCEN). The CTA tasks FinCEN with prescribing rules and regulations implementing the CTA. FinCEN’s final rules and regulations interpret the CTA and set deadlines for businesses to comply with them.

With the Final Rules set to take effect on January 1, 2024, this article discusses the material provisions of the CTA and the Final Rules to assist businesses with CTA compliance. FinCEN estimates that 32,000,000 business entities already in existence as of January 1, 2024, will be required to register with FinCEN, with five million additional reporting companies being added each following year.

Entities Required to Report to FinCEN

The CTA’s beneficial ownership reporting requirements apply to “reporting companies.” The term “reporting companies” is broadly defined as entities that are created or registered to do business by filing a document with a secretary of state or similar office, including corporations, limited liability companies, limited liability partnerships, limited liability limited partnerships, statutory trusts, and most limited partnerships.

The CTA specifically exempts 23 types of entities, including the following: issuers of registered securities; banks; credit unions; securities brokers and dealers; investment companies; investment advisors; insurance companies; accounting firms; 501(c)(3) tax-

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exempt entities; and large operating companies. Each of the 23 exemptions contains complex requirements that an entity must meet in order to qualify for the exemption.

Reporting companies are required to report the following information regarding themselves to FinCEN: (1) name of the company, including any trade name or “doing business as” name; (2) business street address; (3) state of formation; and (4) IRS Taxpayer Identification Number.

Reporting companies are required to report similar information regarding their beneficial owner(s) and company applicant(s), which are discussed below.

Please note though some entities in a company structure may qualify for one or more exemptions, other entities in the structure may still have reporting obligations. For instance, there is no exemption for parent companies or holding companies, even if they own only exempt entities.

Definition of “Beneficial Owner”

The CTA requires all reporting companies to report certain information about their “beneficial owners.” Beneficial owners include individuals meeting the following criteria: (1) those who exercise substantial control over the reporting company, such as senior officers, individuals with authority to appoint or remove senior officers or board members, and those with substantial influence over important decisions; and (2) those who own or control at least 25% of the ownership interests of the reporting company. The Final Rules indicate that reporting companies should always identify at least one beneficial owner. Despite the use of the term “beneficial owner,” reporting companies should understand that the term is quite broad and will likely include non-owners who play a critical role in decision-making in an organization, and the determination of beneficial ownership may be more complex and less straightforward than expected.

Reporting companies must report the following information for each of their beneficial owners: (1) legal name; (2) date of birth; (3) residential or business street address; (4) a unique identifying number from an acceptable identification document (U.S. passport, non-expired state ID, non-expired driver’s license, or, if none of these, non-expired foreign passport); and (5) an image of such document.

Definition of “Company Applicant”

Reporting companies formed on or after January 1, 2024, must report information about their “company applicants.” Company applicants include (1) the individual who directly files the document to create or register the reporting company and (2) if more than one individual is involved in the filing, the individual who is primarily responsible for directing or controlling such filing. The Final Rules limit the definition of “company applicants” to include at most two individuals per reporting company.

With respect to company applicants, reporting companies must report the same five pieces of information as required for their beneficial owners, but a business street address may be reported for a company applicant that forms an entity as part of the company applicant’s job at such business.

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Alternatives to Reporting Beneficial Ownership and Company Applicant Information

To streamline reporting, individuals and reporting companies can obtain a FinCEN Identifier, which is a unique identifying number issued by FinCEN, through an online application. FinCEN has indicated the online application will be open on or after January 1, 2024. FinCEN Identifiers will simplify the process by allowing reporting companies to simply report each individual's unique identifying number to FinCEN; however, individuals and reporting companies must maintain correct information in connection with their FinCEN identifier (such as a change of address). An individual's application for a FinCEN Identifier will require the same pieces of information discussed above. However, the use of a FinCEN Identifier shifts the potentially arduous burden of updating an individual's personal information from the reporting company to the individual. Considering any change in personal information requires a form update within thirty (30) days after the change, this may be attractive to reporting companies that have a larger number of individuals who are considered beneficial owners.

Deadlines for Filing Reports, Updates, and Corrections

The Final Rules establish two different deadlines for reporting companies to file initial reports of beneficial ownership information.

For entities formed before January 1, 2024, the deadline to file an initial report is January 1, 2025. Such report is only required to include information about the reporting company itself and its beneficial owners.

Entities created after January 1, 2024, but before January 1, 2025, will have 90 days after receiving notice of their creation or registration to file initial reports. Entities created on or after January 1, 2025, however, only have 30 days after receiving notice of their creation or registration to file initial reports. Such reports are required to include information about the reporting company itself, its beneficial owners, and its company applicants.

Additionally, reporting companies must submit updates when changes occur to the information previously reported. The deadline to file such updates is 30 days after the date on which changes occur to the information previously submitted.

Finally, reporting companies must submit corrected information when they become aware of any inaccuracies in information previously reported. The deadline to submit corrected information is 30 days after reporting companies become aware or have reason to know that reported information was and remains inaccurate. The Final Rules provide that no civil or criminal penalties will be imposed for submitting inaccurate information if a correction is filed no later than 90 days after the submission of the inaccurate information.

FinCEN is in the process of developing a portal (known as the Beneficial Ownership Secure System [BOSS]) which will be used to file beneficial ownership reports. This portal is not yet publicly available and is expected to go live shortly after the January 1 effective date.

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Beneficial ownership information will be stored in a non-public database managed by FinCEN, but the CTA authorizes FinCEN to disclose reported information to law enforcement and security agencies, as well as financial institutions using the information to conduct legally required customer due diligence (under certain conditions). It should be noted that these reports are not subject to Freedom of Information Act requests, and the CTA does impose security standards on FinCEN in connection with its management of the reported information.

Civil and Criminal Penalties for Non-Compliance

The CTA imposes both civil and criminal penalties for certain reporting violations. Specifically, the CTA makes it unlawful for any person to (1) willfully provide, or attempt to provide, false or fraudulent beneficial ownership information or (2) willfully fail to report complete or updated beneficial ownership information. Violators are subject to a civil penalty of up to \$500 per day for each day a violation continues. Violators may also be subject to criminal penalties of up to \$10,000 or two years in prison.

Next Steps

In advance of the reporting requirement commencing on January 1, 2024, you should determine if any existing entity in which you have an interest is likely to be a “reporting company.” For any such “reporting company,” you should establish procedures to identify and verify the beneficial owners, maintain accurate records, and submit timely reports as required under the CTA. Considering FinCEN’s broad interpretation of “substantial control” and “ownership interests,” and in light of the apparent legislative intent to require disclosure, reporting companies may want to consider taking a conservative approach when determining which individuals must be reported to FinCEN as beneficial owners.

For more information, FinCEN issued a helpful Small Entity Compliance Guide in September 2023, which you may access by [clicking here](#). You may also contact your Burr & Forman attorney with any questions or for more information about the issues discussed in this Alert.