

FEBRUARY 23, 2024

WHAT TO KNOW ABOUT THE CORPORATE TRANSPARENCY ACT (CTA)

■ Background and context

The Corporate Transparency Act (CTA), signed into law on January 1, 2021, is a response to growing concerns over the use of anonymous shell companies for illegal purposes. The CTA mandates that certain entities must report their beneficial ownership information to the Financial Crimes Enforcement Network (FinCEN), a bureau of the U.S. Department of the Treasury.

■ What are the Beneficial Ownership reporting requirements?

One of the central provisions of the CTA is the requirement that entities disclose their beneficial owners and make updates within 30 calendar days of any changes to the Beneficial Owners. Beneficial Owners are individuals who, directly or indirectly, exercise substantial control over or receive substantial economic benefits from a legal entity. This includes individuals who own 25% or more of an entity's ownership interests or have significant managerial control.

■ Is my company considered a reporting entity?

Determining whether a Beneficial Ownership Information (BOI) report must be filed involves a two-step process. First, determine if the entity is a corporation, LLC, or other entity created by the filing of a document with a Secretary of State or similar office, or formed under the laws of a foreign country and registered to do business within the United States. Second, determine if the entity is exempt from having to file a report (a list of exemptions can be found on [pages 3 and 4 of this document](#)).

■ When do I need to file?

Reporting entities created or registered before January 1, 2024, must file by January 1, 2025, through FinCEN. Entities created or registered on or after January 1, 2024, must file within 90 calendar days of receiving notice from the Secretary of State that its creation is effective. Additional reporting is necessary any time the Beneficial Owners changes, and must be done within 30 days.

■ What information do I need to file?

The information to be reported varies based upon the date the entity was established. Entities registered or established after January 1, 2024, **must provide information regarding the entity, its Beneficial Owners, and its entity applicants — including owners' and applicants' (if applicable) names, addresses, birthdays, and identification numbers (such as a driver's license number or passport number).** Businesses established before that date need not provide information regarding entity applicants.

An entity applicant is: (a) the person who directly files the document that creates or registers the reporting company, and (b) if more than one person is involved with the filing of the document, the person who is primarily responsible for directing or controlling the filing.

All reporting entities must provide their legal name and trademarks, as well as their primary U.S. business address. They will also need to provide a Taxpayer Identification Number (TIN) and specify the jurisdiction where they were formed or registered.

In addition to the required initial filing, additional filings will be necessary when there has been a change to the Beneficial Owner, including a new Beneficial Owner or a change to the current Beneficial Owner's address or identification numbers.

■ What are the consequences if I do not file?

Willfully failing to report Beneficial Owners within 90 days of formation or registration for reporting companies created or registered in 2024 or within 30 days of formation or registration for reporting entities created or registered thereafter, or willfully providing false or fraudulent Beneficial Owners, may result in consequences, including a maximum civil penalty of \$500 per day (up to \$10,000) and/or imprisonment of up to two years.

■ Is the information provided in the report confidential?

The information reported to FinCEN through these reports can only be disclosed by FinCEN to a government agency, law enforcement, or financial institutions for compliance with anti-money laundering or other diligence obligations. Freedom of Information Act requests do not cover the CTA reports, which means the reports will not be available to the public.

■ Beware!

FinCEN has issued an alert about fraudulent attempts to solicit information from individuals or entities subject to the CTA.

The CTA scam uses fraudulent correspondence that may be titled "Important Compliance Notice" or something similar and asks the recipient to click a link or scan a QR code. Do not click, scan, or respond to e-mails or letters attempting to solicit CTA information. Note that FinCEN does not send unsolicited communications requesting CTA information from individuals and entities. ***FinCen does not send unsolicited requests.***



Helpful Links

Where do I file?

Financial Crimes Enforcement Network (FinCEN) – Beneficial Ownership Information Portal.

<https://www.fincen.gov/boi>

What does the law say?

Here is a link to the Corporate Transparency Act

https://www.fincen.gov/sites/default/files/shared/Corporate_Transparency_Act.pdf

What if I am a small entity?

Please see FinCEN's Small Entity Compliance Guide.

https://www.fincen.gov/sites/default/files/shared/BOI_Small_Compliance_Guide.v1.1-FINAL.pdf

Please contact any of our attorneys at 216.696.4200 with questions.

EXEMPTIONS

Exempt from being considered a “reporting entity” are the following:

1. Large operating company

Any entity that: (A) employs more than 20 full time employees in the United States, with “full time employee in the United States” having the meaning provided in [26 CFR 54.4980H-1\(a\) and 54.4980H-3](#), except that the term “United States” as used in those sections of the CFR have the meaning provided in [31 CFR 1010.100\(hhh\)](#), (B) has an operating presence at a physical office within the United States, and (C) filed a Federal income tax or information return in the United States for the previous year demonstrating more than \$5,000,000 in gross receipts or sales, as reported as gross receipts or sales (net of returns and allowances) on the entity’s IRS Form 1120, consolidated IRS Form 1120, IRS Form 1120-S, IRS Form 1065, or other applicable IRS form, excluding gross receipts or sales from sources outside the United States, as determined under Federal income tax principles. For an entity that is part of an affiliated group of corporations within the meaning of [26 USC 1504](#) that filed a consolidated return, the applicable amount shall be the amount reported on the consolidated return for such group.

2. Tax-exempt entity

Any entity that is: (A) an organization that is described in [Sec. 501\(c\) of the Internal Revenue Code of 1986](#) (determined without regard to Sec. 508(a) of the Code) and exempt from tax under Sec. 501(a) of the Code, except that in the case of any such organization that ceases to be described in Sec. 501(c) and exempt from tax under Sec. 501(a), such organization shall be considered to continue to be described as a tax-exempt entity for the 180-day period beginning on the date of the loss of such tax-exempt status, (B) a political organization, as defined in [Sec. 527\(e\)\(1\) of the Code](#), that is exempt from tax under Sec. 527(a) of the Code, or (C) a trust described in paragraph (1) or (2) of [Sec. 4947\(a\) of the Code](#).

3. Securities reporting issuer

Any issuer of securities that is: (A) an issuer of a class of securities registered under Section 12 of the [Securities Exchange Act of 1934](#), or (B) required to file supplementary and periodic information under Sec. 15(d) of the [Securities Exchange Act of 1934](#).

4. Governmental authority

Any entity that: (A) is established under the laws of the United States, an Indian tribe, a State, or a political subdivision of a State, or under an interstate compact between two or more States, and (B) exercises governmental authority on behalf of the United States or any such Indian tribe, State, or political subdivision.

5. Bank

Any bank, as defined in: (A) Sec. 3 of the [Federal Deposit Insurance Act](#), (B) Sec. 2(a) of the [Investment Company Act of 1940](#), or (C) Sec. 202(a) of the [Investment Advisers Act of 1940](#).

6. Credit union

Any Federal credit union or State credit union, as those terms are defined in Sec. 101 of the [Federal Credit Union Act](#).

7. Depository institution holding company

Any bank holding company as defined in Sec. 2 of the [Bank Holding Company Act of 1956](#), or any savings and loan holding company as defined in Sec. 10(a) of the [Home Owners’ Loan Act](#).

8. Money services business

Any money transmitting business registered with FinCEN under [31 U.S.C. 5330](#), and any money services business registered with FinCEN under [31 CFR 1022.380](#).

9. Broker or dealer in securities

Any broker or dealer, as those terms are defined in Sec. 3 of the [Securities Exchange Act of 1934](#), that is registered under Sec. 15 of that Act.

10. Securities exchange or clearing agency

Any exchange or clearing agency, as those terms are defined in Sec. 3 of the [Securities Exchange Act of 1934](#), that is registered under Secs. 6 or 17A of that Act.

11. Other Exchange Act registered entity

Any entity other than that described in exemption 3 (Securities reporting issuer), exemption 9 (Broker or dealer in securities), or exemption 10 (Securities exchange or clearing agency) that is registered with the SEC under the [Securities Exchange Act of 1934](#).

12. Investment company or investment adviser

Any entity that is: (A) an investment company as defined in Sec. 3 of the [Investment Company Act of 1940](#), or is an investment adviser as defined in Sec. 202 of the [Investment Advisers Act of 1940](#), and (B) registered with the SEC under the Investment Company Act of 1940 or the Investment Advisers Act of 1940.

13. Venture capital fund adviser

Any investment adviser that: (A) is described in section 203(l) of the [Investment Advisers Act of 1940](#), and (B) has filed Item 10, Schedule A, and Schedule B of Part 1A of Form ADV, or any successor thereto, with the SEC.

14. Insurance company

Any insurance company as defined in Sec. 2 of the [Investment Company Act of 1940](#).

15. State-licensed insurance producer

Any entity that: (A) is an insurance producer that is authorized by a State and subject to supervision by the insurance commissioner or a similar official or agency of a State, and (B) has an operating presence at a physical office within the United States.

16. Commodity Exchange Act registered entity

Any entity that: (A) is a registered entity as defined in Sec. 1a of the [Commodity Exchange Act](#), or (B) is: (1) a futures commission merchant, introducing broker, swap dealer, major swap participant, commodity pool operator, or commodity trading advisor, each as defined in Sec. 1a of the Commodity Exchange Act, or a retail foreign exchange dealer as described in Sec. 2(c)(2)(B) of the Commodity Exchange Act and (2) registered with the Commodity Futures Trading Commission under the Commodity Exchange Act.

17. Accounting firm

Any public accounting firm registered in accordance with Sec. 102 of the [Sarbanes-Oxley Act of 2002](#).

18. Public utility

Any entity that is a regulated public utility as defined in [26 USC 7701\(a\)\(33\)\(A\)](#) that provides telecommunications services, electrical power, natural gas, or water and sewer services within the United States.

19. Financial market utility

Any financial market utility designated by the Financial Stability Oversight Council under Sec. 804 of the [Payment, Clearing, and Settlement Supervision Act of 2010](#).

20. Pooled investment vehicle

Any pooled investment vehicle that is operated or advised by a person described in exemptions 5 (bank), 6 (credit union), 9 (broker or dealer in securities), 12 (investment company or investment adviser), or 13 (venture capital fund adviser).

21. Entity assisting a tax-exempt entity

Any entity that: (A) operates exclusively to provide financial assistance to, or hold governance rights over, any entity described in exemption 2 above (tax-exempt entity), (B) is a United States person, (C) is beneficially owned or controlled exclusively by one or more United States persons that are United States citizens or lawfully admitted for permanent residence, and (D) derives at least a majority of its funding or revenue from one or more United States persons that are United States citizens or lawfully admitted for permanent residence.

22. Subsidiary of certain exempt entities

Any entity whose ownership interests are controlled or wholly owned, directly or indirectly, by one or more entities described in exemptions 1,2,3,4,5,6,7,9,10,11,12,13, 14,15,16,17,18 or 19 set forth above.

23. Inactive entity

Any entity that: (A) was in existence on or before January 1, 2020, (B) is not engaged in active business, (C) is not owned by a foreign person, whether directly or indirectly, wholly or partially, (D) has not experienced any change in ownership in the preceding twelve-month period, (E) has not sent or received any funds in an amount greater than \$1,000, either directly or through any financial account in which the entity or any affiliate of the entity had an interest, in the preceding 12 month period, and (F) does not otherwise hold any kind or type of assets, whether in the United States or abroad, including any ownership interest in any corporation, limited liability company, or other similar entity.

Please contact any of our attorneys at 216.696.4200 with questions.