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Corporate Transparency Act Essentials

26 Days Until the CTA Takes Effect

*What You Need to Know;
What You Need to Do*

December 6, 2023

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Panelists



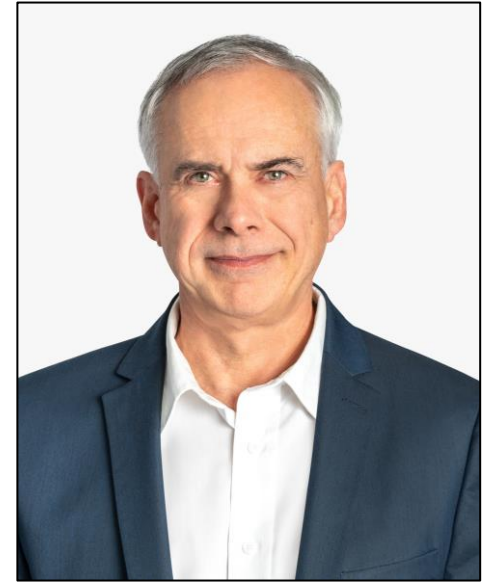
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What's the CTA?

- The Corporate Transparency Act of 2020 (the “CTA”) was approved as part of the William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021.
- The Final Rule was adopted on September 29, 2022.
- It becomes effective January 1, 2024.
- The stated purpose of the CTA is to:

“protect the U.S. financial system from illicit use and impeding malign actors from abusing legal entities, like shell companies, to conceal proceeds of corrupt and criminal acts.”

- Simply put, it seeks the disclosure of corporate ownership and the prevention of money laundering.

Corporate Transparency Act Overview

**Who is
Impacted?**

Requirements

Timing

**Authorized
Disclosures**

Next Steps

Required Filings for Reporting Companies

Who is required to report? “Reporting Companies” – Domestic & Foreign

Unless covered by an exemption, the CTA requires small corporations, limited liability companies, limited partnerships, statutory trusts or any other entity created by the filing of a document with a Secretary of State (or similar office under state law, Indian Tribal law or foreign jurisdictions) to disclose information regarding their **Beneficial Owners** and **Company Applicants**.

Sole proprietorships, general partnerships, and common law trusts are not covered.

FinCEN estimates 32+ Million entities!

Exemptions

There are **23** exemptions. In general, they include many entities that already are subject to substantial federal or state regulation under which beneficial ownership already may be known.

- For example, **regulated entities** that are exempt include: (i) entities that file reports with the SEC, (ii) government authorities, (iii) banks, (iv) credit unions, (v) money services businesses, (vi) investment advisors, (vii) securities brokers and dealers, (viii) tax exempt entities, (ix) entities assisting tax exempt entities, (x) insurance companies, (xi) state-licensed insurance producers, (xii) pooled investment vehicles, (xiii) public utilities. (xiv) inactive entities, (xv) accounting firms, and (xvii) large operating companies.
- A **large operating company** is an entity that (i) employs more than 20 full time employees in the US, (ii) has an operating presence at a physical office in the U.S., and (ii) has filed federal income tax or information return in the U.S. for the previous year demonstrating more than \$5 Million in gross receipts or sales on IRS form 1120 or other applicable forms, excluding gross receipts or sales from sources outside the U.S.
- **Tax exempt entities.**
- Certain **subsidiaries of exempt entities.**
- If an entity loses an exemption, it will then have 30 days to make the required filing.

Required Filings

	Existing Entities (as of December 31, 2023)	New Entities
Filing Deadline	December 31, 2024	90 days for entities formed <u>prior to</u> January 1, 2025 30 days for entities formed <u>on or after</u> January 1, 2025
“Company Applicant” Information		✓
“Beneficial Ownership” Information	✓	✓

Filing system will be online through FinCEN’s website (not released yet)

Updates must be filed within 30 days of knowledge of change.

Company Applicants

- A “Company Applicant” is defined as: the individual(s) who files the document that creates the company, as well as any individual primarily responsible for directing or controlling the filing.
- **NOTE:** If a manager is responsible for supervising a junior employee, they both would be Company Applicants.
- There can be up to two Company Applicants on a given filing.
- While still evolving, various law firms, accounting firms and other professionals are taking differing positions as to when, if at all, they will agree to serve as Company Applicants.
- Several third-party service providers are developing products to help those forming entities comply with the CTA.

Company Applicants: Required Information

- Company Applicants are required to provide their:

- 1 Full legal name
- 2 Date of birth
- 3 Current address
- 4 A unique identification number assigned by an issuing jurisdiction (e.g., current passport or driver's license), plus a copy of the document from which the ID number was taken

Company Applicant: Personal Information

- The personal information of the Company Applicant must be included in each applicable filing.
- However, the Company Applicant can instead provide the information to FinCen and obtain a FinCen ID number. Instead of disclosing the personal information each time, the Company Applicant would merely have to reference its FinCen ID number.
- **NOTE:** Absent any changes in the guidance, a Company Applicant will not be able to obtain a FinCen ID number until January 1. We anticipate many requests for FinCen ID numbers as soon as they can be sought, so you will want to submit the required information as early as possible.

Required BOI

As noted, the form remains in process and is not yet available for review. Based on the CTA and its related guidance, the BOI that will be required is:

As to the Company:

1. Full legal name
2. Any trade name or d/b/a
3. Current address in the U.S.
4. State, tribal or foreign jurisdiction of formation
5. Taxpayer Identification Number (including the EIN)

As to the Beneficial Owners:

1. Full legal name
2. Date of birth
3. Current residential address
4. Unique identification number and issuing jurisdiction (e.g., current passport or driver's license), plus a image of the document from which the id number was taken)

Beneficial Owners

Beneficial Owners are those that:

- Exercise substantial control (including negative control) over the entity (serves as a senior officer, appoints or removes senior officers or makes/approves major decisions for the entity);
- Own 25% or more of the entity (This includes convertible notes, warrants, options and similar instruments, whether or not exercised);
or

This applies to domestic and foreign entities.

Criminal Penalties

There are both civil and criminal penalties for willful failure to report or willfully providing false or fraudulent BOI:

- Civil Penalties are \$500 per day for a continuing violation, up to a maximum of \$10,000.00,
- Criminal penalties are up to 2 years in jail.

What to Do

If you already have entities that may be Reporting Companies in 2023:

1. Determine whether any exemptions will apply;
2. Identify who in your organization will identify beneficial owners and manage the collection, storage and reporting of beneficial owners' BOI;
3. Certain of the BOI constitutes personally identifiable information. As a result, it is important that you establish internal policies and procedures governing collection, secure storage, and reporting of BOI;
4. Notify beneficial owners of their obligations to provide their BOI;
5. Collect, store and report to FinCEN before the December 31, 2024 deadline;
6. Identify and select outside vendors to assist with any of the above tasks.

What to Do (Continued)

Other steps to consider:

If you anticipate that you may need to form a new entity in the near future, you may benefit from forming the entity on or before Friday, December 29, 2023:

- to give you more time to file your FinCEN report,
- to avoid reporting the Company Applicant.

Consider updating LLC operating agreements, bylaws, shareholder agreement, and other charter documents so that beneficial owners are legally required to cooperate with the entity's Corporate Transparency Act obligations.

Questions?

