

Corporate Transparency Act Imposes New Federal Reporting Requirements on Small Businesses

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With its effective date on the horizon, many businesses will now need to file reports with the U.S. Dept of Treasury FinCEN division under the new Corporate Transparency Act. This Act, which is part of Congress' Anti-Money Laundering Act of 2020, primarily applies to small companies with fewer than twenty (20) employees and requires such entities to report certain beneficial ownership information. Compliance with these reporting requirements can be time consuming, and failure to comply may result in significant penalties. As such, it's critical for business owners to understand whether the CTA applies to them and the scope and requirements of reporting under the CTA.

Overview Of The Corporate Transparency Act

Passed by Congress as part of the National Defense Authorization Act on January 1, 2021, the Corporate Transparency Act ("CTA") will implement new reporting requirements for small businesses and establish the creation and maintenance of a national registry of beneficiary owners of entities in an attempt to combat money laundering, tax fraud and other illicit activities. Beginning **January 1, 2024**, many companies will now be required to file an one-time report with the U.S. Department of the Treasury's Financial Crimes Enforcement Network ("FinCEN") identifying the entity's beneficial owners-the persons who ultimately own or control the company-and providing similar identifying information about the persons who formed the entity (collectively, "beneficial ownership information" or "BOI"). The CTA also authorizes FinCEN to disclose this information to authorized government authorities and to financial institutions in certain circumstances.

Which Entities Are Required to Report?

The CTA requires the following types of entities to file a BOI report, unless they fall under an exemption (each, a "Reporting Company"):

- **Domestic Reporting Companies:** corporations, limited liability companies or other entities created by filing a document with a secretary of state or any similar office under the law of any U.S. state, territory or federally recognized Indian Tribe.
- **Foreign Reporting Companies:** corporations, limited liability companies, or other entities formed under the law of a foreign country that are registered to do business in the United States through the filing of a document with a secretary of state or any similar office under the laws of any U.S. state, territory or federally recognized Indian Tribe.

What Entities Are Exempt From BOI Reporting

There are twenty-three (23) types of entities that are exempt from the definition of Reporting Company and consequently are not required to file reports under the CTA. Exempt entities include governmental authorities, banks, credit unions, money services businesses, registered broker dealers, exchanges and clearing agencies, insurance companies, accounting firms, public utilities, certain non-profit entities, and entities assisting non-profit entities.

Some notable exemptions include:

- **Large U.S. operating companies:** any entity that (1) employs more than twenty (20) full-time employees in the U.S.; (2) in the previous year filed U.S. federal income tax returns demonstrating more than \$5,000,000 in gross receipts or sales in the aggregate (on a consolidated basis, if applicable), excluding gross receipts or sales from sources outside the U.S.; and (3) has an operating presence at a physical office within the U.S.
- **Publicly traded companies** that are issuers of securities and registered under Section 12 of the Securities Exchange Act of 1934 (the “Exchange Act”) or otherwise required to file supplementary and periodic information under Section 15(d) of the Exchange Act.
- **Investment companies or investment advisers**, as defined in the Investment Company Act of 1940 (the “Investment Company Act”) or the Investment Advisers Act of 1940 (the “Advisers Act”) that are registered with the SEC.
- **Venture capital fund advisers** who are described in Section 203(l) of the Advisers Act and have filed Item 10, Schedule A, and Schedule B of Part 1A of Form ADV, or any successor thereto, with the SEC.
- **Trusts**, as defined in paragraph (1) or (2) or IRC Section 4947(a) (i.e. Charitable and Split-Interest Trusts).
- **Pooled investment vehicles:** any investment company (as defined in Section 3(a) of the Investment Company Act) or company that would be an investment company but for an applicable exception provided for in the Investment Company Act.
- **Subsidiaries** that are controlled or wholly-owned, directly or indirectly, by certain exempt entities (e.g., operating subsidiaries of a publicly traded corporation). With respect to subsidiaries, companies should note that:
 - this exemption does not extend to: subsidiaries of money transmitting or money services businesses, pooled investment vehicles, or entities existing exclusively to provide financial assistance to tax-exempt entities; and
 - subsidiaries of large foreign companies that do not qualify for the large operating company exemption because of insufficient U.S. presence or gross receipts. Such subsidiaries will be required to report BOI under the CTA absent another applicable exemption, regardless of whether these direct or indirect parent companies are exempt from reporting.
- **Note:** Sole proprietorships and general partnerships, which are not created through the filing of a document with the secretary of state or any similar office, are not within the scope of the

definition of a reporting company and are therefore not subject to BOI reporting requirements. However, businesses operating as joint ventures should seek further guidance to ensure compliance with the CTA.

What Information Must Be Reported

A Reporting Company must report information on (a) its **beneficial owners** and (b) itself. Beneficial owners are defined as individuals (i.e. natural persons) who directly or indirectly either (i) exercise **substantial control** over the Reporting Company; or (ii) **own or control twenty-five percent (25%) or more** of the ownership interest in the Reporting Company.

Substantial Control

Under the CTA, an individual exercises substantial control over a Reporting Company if the individual:

- serves as a senior officer of the Reporting Company (“senior officer” includes any individual holding the position or exercising the authority of president, CEO, CFO, COO, general counsel, or any other officer, regardless of title, performing a similar function);
- has authority over the appointment or removal of any senior officer or a majority of the board of directors (or similar body) of the Reporting Company;
- directs, determines, or has substantial influence over important decisions made by the Reporting Company (such as the nature and scope of the reporting company's business, major expenditures or investments, issuance of any equity, etc.); or
- has any other form of substantial control over the Reporting Company.

The CTA provides several exceptions that where exercise over a Reporting Company does not count as substantial control. The CTA states that Beneficial Ownership does not include:

- a minor child, as defined under the law or Indian Tribe in which a domestic Reporting Company is created or a foreign Reporting Company is first registered, provided the reporting company reports the required information of a parent or legal guardian of the minor child;
- an individual acting as a nominee, intermediary, custodian, or agent on behalf of another individual;
- an employee of a Reporting Company, acting solely as an employee, whose substantial control over or economic benefit from such entity are derived solely from the employment status of the employee, provided that such person is not a senior officer;
- an individual whose only interest in a Reporting Company is a future interest through a right of inheritance; or
- a creditor of a Reporting Company.

Ownership Interests

The CTA defines the term ownership interests broadly and without regard to the specific type of entity in which the interest is held. In addition to any equity, membership interests, stock or similar security (whether or not transferable and whether voting or not), the CTA defines ownership interest to include:

- any capital or profits interest in an entity;
- any instrument convertible, with or without consideration, into any share or similar instrument or any future on any such instrument, whether or not characterized as debt;
- any warrant or right to purchase, sell, or subscribe to a share or other interest in an entity;
- any put, call, straddle, or other option or privilege of buying or selling any interests without being bound to do so, except to the extent that the option or privilege is held by a third party or third parties without the knowledge or involvement of the Reporting Company; and
- any other instrument, contract, arrangement, understanding, relationship, or mechanism used to provide benefit of ownership.

Beneficial owners are required to disclose the following:

- Full legal name;
- Date of birth;
- Complete current address; and
- Unique identifying number from an acceptable identification number document, such as a U.S. passport issued by the U.S. government, or a state-issued driver's license.

A Reporting Company is also required to disclose basic information on the entity itself in its report, including:

- The full legal name of the Reporting Company;
- any trade names, doing business as, or trading as names through which the Reporting Company conducts business whether or not formally registered;
- the Reporting Company's complete current address including the company's principal place of business, or the address of the primary location in the US where the Reporting Company conducts its business;
- the Reporting Company's state, tribal, or foreign jurisdiction of formation; and
- the Reporting Company's IRS taxpayer identification number (TIN), including any employer identification number (EIN).

BOI Reporting Dates And How To Report

BOI reports are to be submitted electronically through the secure filing system that will be available through FinCEN's website. If the Reporting Company is created or becomes a foreign Reporting Company **before the CTA effective date (January 1, 2024)**, then the Company has until January 1, 2025, to file its BOI report. However, if the Company is created or becomes a foreign Reporting Company **on or after the effective date of the CTA**, then the new Reporting Company must file their BOI report within thirty (30) days of the **earlier** of:

1. receiving actual notice that its creation or registration to do business has become effective; or
2. a secretary of state or similar office providing public notice (such as through a publicly accessible registry) that the domestic Reporting Company has been created or, in the case of foreign Reporting Company, is registered to do business.

Updating Your BOI Report for Changes

Any changes to information provided in the initial BOI report regarding the Reporting Company itself or its beneficial owners such as changes of company address, beneficial owners' names, or exemption status must be updated and reported within **thirty (30) days** of the date the changes occurred. Reporting Companies must also correct any inaccurate information in previously filed BOI reports. Corrected reports must be filed within **thirty (30) days** of discovery of the inaccuracy and within **ninety (90) days** of the initial filing in order to take advantage of the CTA's safe harbor provisions.

Penalties for Violations

The CTA lays out penalties for any person who willfully provides or attempts to provide false or fraudulent information on a BOI report; or fails to report completely or timely update their BOI information to FinCEN. Penalties established in the CTA include civil penalties of no more than \$500 for each day that the violation has not been remedied up to a \$10,000 maximum penalty and potential criminal penalties, including imprisonment for up to two (2) years. These penalties may also extend to:

- Individuals and Reporting Companies who cause another Reporting Company to not report;
- Senior officers of a Reporting Company at the time of its failure to fulfill its obligation to accurately report or update any BOI; and
- Any person who knowingly discloses or uses BOI reported to FinCEN for an unauthorized manner.

Penalty Safe Harbor

The CTA provides a penalty safe harbor if the Reporting Company that submitted an inaccurate BOI report files a corrected report within **thirty (30) days** after becoming aware or having reason to know of the inaccuracies.

CONCLUSION

The CTA represents a significant shift in U.S. corporate compliance. While the CTA will largely target smaller, unregulated entities, those operating persons private funds, pooled investment vehicles, and other privately-owned companies should carefully evaluate their particular circumstances to determine their reporting obligations under the CTA.

If you have any questions regarding the CTA or any of the information above, please contact a member of Benesch's [Corporate & Securities Practice Group](#).

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