

The Corporate Transparency Act: What You Need to Know



The Corporate Transparency Act (“CTA”) is now in effect, and many business entities must report specific “beneficial ownership information” (“BOI”) to the U.S. Treasury Department’s Financial Crimes Enforcement Network (“FinCEN”) by January 1, 2025, or maybe even sooner. Below is a basic overview of the CTA and how business entities must comply with the new law.

WHO HAS TO REPORT?

The CTA requires all “reporting companies” to file BOI reports, unless an exemption applies. All limited liability companies, corporations and other entities that filed formation or registration documents with the Kentucky Secretary of State or the secretary of state or another similar office of any U.S. state are considered “reporting companies,” including single-member LLCs. Non-U.S. entities are considered reporting companies if they registered to do business in any U.S. state.

The CTA identifies 23 types of entities that are exempt from reporting requirements, notwithstanding meeting the definition of a reporting company. These exemptions generally fall into categories that are more highly-regulated than non-exempt entities and include such entities as:

- “Large operating companies” that (i) have more than 20 full-time employees, (ii) more than \$5 million of reported revenue to the IRS for the prior year, and (iii) an operating presence at a physical office within the U.S.
- Tax-exempt entities like nonprofits, political organizations, and some kinds of trusts
- Public companies
- Banks, investment companies, pooled investment vehicles
- Wholly owned subsidiaries of exempt entities
- Governmental authorities

WHAT MUST BE IN THE REPORT?

The BOI report must include the following information for the reporting company:

- The company’s full legal name and any assumed name or trade name
- The company’s principal address
- The state where the company was formed
- The company’s EIN/TIN
- Details about the company’s “beneficial owners”
- Details about the “company applicants” (only for entities formed on or after January 1, 2024) – those who file the document creating or registering the company or those responsible for directing the filing by another, such as an attorney or paralegal

The information required for beneficial owners is a full legal name, date of birth, residential address, and a unique identifying number from a passport, driver’s license, or other government-issued identification along with a copy of that document. Company applicants must provide the same, save for providing a business address instead of a residential address if filing in the course of their business.

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WHO IS A “BENEFICIAL OWNER”?

A “beneficial owner” is an individual who, directly or indirectly, exercises substantial control over the reporting company or owns or controls 25% or more of the ownership interests in the company. An ownership interest is interpreted broadly here - it includes such items as any equity or stock, preorganization certificate or subscription, or a transferable share of an equity security, and it extends to such individuals as trustees or certain beneficiaries or grantor/settlors of trusts that hold ownership interests.

The “substantial control” aspect is similarly interpreted broadly – an individual exercises substantial control by serving as a senior officer of the reporting company (President, CFO, General Counsel, etc.), by having the authority to appoint or remove any senior officer or a majority of the board of directors, by directing or having substantial influence over important decisions made by the company, or by having any other form of substantial control over the company. FinCEN expects all BOI reports to identify at least one individual with substantial control.

WHEN IS THE FILING DUE?

Entities in existence prior to January 1, 2024, have until January 1, 2025, to file their initial BOI report with FinCEN. Entities formed or registered in the U.S. during 2024 have 90 days from their formation or registration date to file their initial BOI report. Starting in 2025, initial BOI reports will be due within 30 days of formation or registration.

If any of the reported information changes or a beneficial ownership interest is sold or transferred, an updated BOI report should be filed within 30 days of the change.

WHAT ARE THE PENALTIES FOR NON-COMPLIANCE?

The CTA comes with sharp teeth – there are civil and criminal penalties for willful violations, with a fine of up to \$10,000 or imprisonment for up to two years, or both. Penalties may also be imposed on companies and individuals who cause a reporting company to miss making a report and senior officers of the reporting company when it failed to accurately report or update its BOI.

WHAT’S NEXT?

LLCs, corporations, and other entities should take steps to comply with the CTA, including:

- Determining whether the entity falls within one of the 23 exemptions from reporting requirements
- Determining the individuals who are its beneficial owners
- Timely obtaining the required personal information of its beneficial owners
- Timely filing its BOI report
- Ensuring that necessary parties are promptly notified of any change in its beneficial owners’ required personal information

Compliance with these new requirements may be confusing and time-consuming, and the new regulations continue to be a moving target. For more information or advice regarding your CTA compliance and reporting obligations, or for assistance in filing your BOI reports, please contact your McBrayer attorney or CTA@mcbayerfirm.com.