



Corporate Transparency Act: What You Need to Know

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The Corporate Transparency Act (the “CTA”) went into effect on January 1, 2024 (the “Effective Date”). The CTA requires certain entities formed in the United States or registered to transact business in the United States to file a report with the U.S. Department of Treasury’s Financial Crimes Enforcement Network (“FinCEN”).

The CTA applies to existing entities (those formed prior to the Effective Date) and new entities (those formed after the Effective Date), unless an exemption applies to that entity. A company that is required to file a report and fails to do so or reports inaccurate information will be subject to penalties. If you have any questions, please do not hesitate to contact us. Below, please find a more detailed summary of the CTA for your reference.

Background

On January 1, 2021, Congress enacted the Corporate Transparency Act (the “CTA”) as part of the Anti-Money Laundering Act of 2020 in the National Defense Authorization Act for Fiscal Year 2021. Congress passed this as an attempt to better enable critical national security, intelligence, and law enforcement efforts to counter money laundering, the financing of terrorism, and other illicit activity.

The CTA requires a range of entities to file a report with the U.S. Department of Treasury's Financial Crimes Enforcement Network ("FinCEN") identifying the entities' beneficial owners – the persons who ultimately own or control the company – and provide similar identifying information about the persons who formed the entity. The reporting rule went into effect on January 1, 2024.

Who is Required to Report?

Any entity that is a corporation, a limited liability company ("LLC"), or any entity created by filing with a Secretary of State or any similar office under the law of a State or



Indian tribe will be required to comply with the CTA. In addition, any corporation, LLC, or other entity that is formed under the laws of a foreign country and is registered to do business in any State or tribal jurisdiction is also subject to the CTA.

Accordingly, the rule requires the following types of entities to file reports, unless it falls within an exemption (each, a "Reporting Company"):

- Corporations;
- LLCs;
- Other similar U.S. entities such as limited partnerships and business trusts/statutory trusts; and
- Non-U.S. corporations, LLCs and other similar entities that are registered to do business in the United States.

Are There Any Exemptions?

The CTA exempts twenty-three (23) categories of entities from the definition of "reporting company" and empowers FinCEN to create new exemptions. Exempted entities include the following, which each have detailed definitions:

- Large operating companies — companies with 20 or more full-time U.S. employees, more than \$5 million in U.S.-sourced revenue, and a physical operating presence in the U.S.;
- Issuers registered with the Securities and Exchange Commission;
- Banks, bank holding companies, savings and loan holding companies, credit unions, financial market utility entities, and money services businesses registered with FinCEN;

- Registered Commodity Exchange Act entities, registered investment companies or investment advisers, broker-dealers, and registered venture capital fund advisers;
- Insurance companies or state-licensed insurance producers;
- Accounting firms;
- Public utilities;
- Certain pooled investment vehicles;
- Tax-exempt entities or certain entities that assist tax-exempt entities; and
- Inactive companies.

The rule also provides a reporting exemption for subsidiaries that are controlled or wholly owned, directly or indirectly, by one or more exempt entities. However, this exemption does not extend to subsidiaries of money services business, pooled investment vehicles, or entities assisting a tax-exempt entity.

What is Required to be Reported?



Each Reporting Company is required to report:

- Entity name (and any alternative trade or d/b/a name);
- Business street address;
- Jurisdiction of formation and, for foreign entities, the State or Tribal jurisdiction of registration; and
- A unique identification number (such as TIN, EIN, LEI, etc.).

The rule also requires the Reporting Company to report its beneficial owners and, for certain Reporting Companies, the “company applicants” who directly file, and who are primarily responsible for filing or directing or controlling the filing of, the entity’s formation documents (the “Company Applicants”). The identifying information required to be reported for beneficial owners and Company Applicants includes:

- Full legal name;
- Date of birth;
- Current residential or business street address; and
- A unique identifying number from an acceptable identification document (such as a State issued ID or passport) along with an image of the document.

Who is Considered a Beneficial Owner?

CTA defines a beneficial owner as an individual who, directly or indirectly, either (1) exercises substantial control over a Reporting Company or (2) owns or controls at least 25% of the ownership interests of a Reporting Company.

What is Substantial Control?

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

- Serves as senior officer of the Reporting Company; the rule defines a “senior officer” to include any individual holding the position or exercising the authority of president, CEO, CFO, COO, general counsel, or any other officer 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 matters of the Reporting Company (including, for example, reorganization, dissolution or merger of the Reporting Company, the election of termination of business lines or ventures or the amendment of any governance documents); or
- Has any other form of substantial control over the Reporting Company.

This last prong is a catch-all provision for control that is exercised in less conventional ways and for entities with atypical governance structures. It is designed to capture anyone who can make important decisions on behalf of the entity.

What is Considered an Ownership Interest?



The CTA defines “ownership interest” as any instrument, contract, arrangement, understanding, or mechanism used to establish ownership (such as any equity, stock, capital, or profit interest).

An individual may own or control an ownership interest of a Reporting Company in a variety of ways directly or indirectly, including through joint ownership, certain trust arrangements, or acting as an intermediary, custodian, or agent on behalf of another.

The CTA captures convertible instruments, warrants, and other rights to purchase, sell, or subscribe to an ownership interest as well, regardless of whether they are characterized as debt or equity. In addition, puts, calls, and other options to buy or sell ownership interests are also included in this definition, except to the extent created and held by a third party without the knowledge or involvement of the Reporting Company.

“Beneficial owner” does not include minor children (so long as a parent or legal guardian’s information is reported), individuals acting as nominees, intermediaries, custodians, or agents, employees acting solely as employees and not as senior officers, individuals whose only interest in the Reporting Company is a future interest through a right of inheritance, or creditors of a Reporting Company (unless the creditor otherwise meets this definition by exercising substantial control or by owning or controlling 25% or more of the entity’s ownership interests).

Does the Company Applicant Need to be Reported?

The CTA requires new companies or registered on or after the rule’s effective date of January 1, 2024, to provide identifying information of the Company Applicant. Reporting Companies created or registered prior to January 1, 2024 are not required to report their Company Applicant.



When do I Need to Report By?

The rule went into effect on January 1, 2024. Reporting Companies created before January 1, 2024, have one year -- **until January 1, 2025** -- to file the required information. These companies are required to submit information about their beneficial owners but are not required to report information on their Company Applicants.

Reporting Companies created on or after January 1, 2024, and on or before December 31, 2024, will be required to file the required information within ninety (90) days after receiving notice of an effective formation or registration. All other companies will be required to file the report within thirty (30) days of formation. Companies formed or registered after the effective date of the rule are required to include information on both the Company Applicants and beneficial owners.

If there are any changes to the information previously reported concerning a Reporting Company or beneficial owner it must be reported to FinCEN within thirty (30) days of the date of the change. No updates are required with respect to Company Applicant information. Any inaccuracies must be reported within thirty (30) days of when the Reporting Company becomes aware of the inaccuracy. Note that any time there is a change in an entity's ownership, whether or not the entity is a Reporting Company prior to the change in ownership, the entity may be required to file beneficial owner information or update an existing report.

Penalties for Not Reporting Within the Deadlines

Violations of the CTA, including the failure to report beneficial ownership information or the reporting of false or fraudulent information, may lead to civil or criminal penalties. Civil penalties can be up to \$500 for each day the violation continues. Criminal penalties include fines up to \$10,000 and/or imprisonment for up to two years.

Those needing assistance in this regard may contact us by email info@henlaw.com or by phone at 239-344-1100 to schedule a consultation.

About the Authors



Erin Houck-Toll holds dual certification in Health and Tax law and is chair of the firm's Health Care, M&A, Business Planning, and Tax practices. Specializing in federal and state taxation, she represents clients before the IRS and Florida Department of Revenue. Recognized for her excellence, she's been honored by Gulfshore Business Magazine, Naples Illustrated, and Florida Super Lawyers® and nationally by Best Lawyers in America®.

Margaret Karakashian, who is admitted to practice in both Florida and California, offers a range of legal services designed to safeguard and grow businesses. Her experience spans entity formation, contract negotiation, mergers and acquisitions, and ongoing corporate counsel. With her background as a tax accountant, she integrates tax-efficient strategies ensuring that clients are not only compliant with legal obligations but also operate in a financially efficient manner.

