



## **Corporate Transparency Act – The Reporting Rule**

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The Corporate Transparency Act (“CTA”) establishes uniform beneficial ownership information reporting requirements for certain types of entities created in or registered to do business in the United States. As part of this legislation, the Treasury Department’s Financial Crimes Enforcement Network (“FinCEN”) is authorized to collect and disclose certain information to authorized government authorities and financial institutions, subject to identified safeguards and controls. The aim of the CTA and its implementing regulations is to create a central registry of essential information to provide to law enforcement, national security agencies, and others in order to prevent criminals, terrorists, proliferators, and corrupt actors from concealing illicit money or other property in the United States.

The CTA requires companies formed or registered to do business in the U.S. to submit reports to FinCEN identifying their beneficial owners and to identify those with filing responsibility for the companies, either directly or indirectly. The specific reporting requirements of the CTA and its implementing regulations are described below.

On September 30, 2022, FinCEN issued the final rule on Beneficial Ownership Information Reporting Requirements as part of its implementation of the CTA. The Effective Date for the final rule is January 1, 2024, when, unless otherwise exempt under the CTA, compliance becomes mandatory for all existing and newly formed entities.

## *Which Entities Must Report*

In broad terms, a “reporting company” includes statutorily created business entities that do not fall within one of the categories of enumerated exemptions. Generally speaking, these entities include limited liability companies, corporations, limited partnerships, and any other entity formed by a filing with a secretary of state’s office, whether such entity is a domestic entity formed in the U.S. or a foreign entity formed in a foreign country but registered to do business in the U.S. For purposes of the CTA, this means that most sole proprietorships, general partnerships, certain trusts, and other entities that are not formed pursuant to a state filing requirement will not be subject to the CTA’s reporting requirements.

There are 23 enumerated exemptions to the CTA reporting rule, which generally include companies that are heavily regulated, publicly traded, or otherwise currently required to report similar information to governmental agencies (i.e., banks, insurance companies, registered investment companies, etc.). Nonprofit entities and charities are also generally exempt, as well as certain “large operating companies” that meet minimum thresholds for employees, gross revenues, and operating presence.

Nonetheless, many business owners and practitioners are surprised to learn that the reporting requirements under this rule are broad enough to sweep up most small “Mom and Pop” type operating businesses as well as non-operating entities that serve mainly as holding companies for asset protection purposes, such as a limited liability company which owns rental properties or a vacation home. Practically speaking, the vast majority of entities will be impacted by the CTA regulations.

## *What Information Must Be Reported*

If a company does not meet an exemption and otherwise finds itself subject to the CTA reporting requirements, the company is required to report certain information with respect to its beneficial owners and any company applicant.

A “beneficial owner” is defined as any individual who directly or indirectly exercises substantial control over the entity or owns or controls at least 25% of the ownership interest thereof. “Substantial control” exists if one of three indicators is met, namely, if such individual: (i) serves as a senior officer of a reporting company through executive functions (which typically includes the president, CEO, CFO, General Counsel, COO and other officers performing similar functions); (ii) has authority over the appointment/removal of any senior officer or board majority; or (iii) directs, determines or has substantial influence over important decisions of a reporting company. Substantial control also includes others who have “any form of substantial control over a reporting company,” which may capture individuals who have significant roles in the decision-making process but lack formal authority within the organization. Many entities may have multiple persons that would fall under the umbrella of “substantial control,” resulting in multiple individual reports filed with respect to a single entity. It should also be noted that the objective is to ultimately identify natural persons who meet this definition.

It is not sufficient to identify parent companies in a tiered corporate structure; rather, the ultimate individual owners or those with the ability to control the entity or individual with such interests will need to be identified and applicable information disclosed.

A “company applicant” is (i) any individual who files the document to form the reporting company, or to register a foreign entity to do business, in the U.S. and (ii) any individual who causes another person to file the document to form the reporting company or register the foreign entity to do business on their behalf, in each case after January 1, 2024. Although this definition is expansive, the rule limits the number of reported company applicants to two, consisting of the individual making the filing and the individual who is primarily responsible for directing the filing.

Reporting companies must report key information about the company and identify each beneficial owner and company applicant by providing their (i) full legal name, (ii) date of birth, (iii) current residential or business street address, and (iv) a unique identifying number and image from an acceptable identification document (e.g., a valid passport or driver’s license number and an image of the license or passport as the case may be).

Individuals also have the opportunity to submit their information to FinCEN in advance in order to receive a “identifying number” from FinCEN. Any individual who is required to report the key information detailed above may instead submit their identifying number.

### *Continuing Compliance*

The obligation to report does not end with the initial filing. The rule dictates that if any previously reported information is changed, the prior report must be amended to include the updated information. To illustrate, if an individual’s driver’s license address is renewed or an address is updated, this modified information would trigger a required amendment, and a new image of the document would need to be submitted. It is also important to remember that deaths, gifts, trust distributions, entity reorganizations, and changes in officers and directors may necessitate an amended report. Similarly, if a company was initially exempt from the obligations of the CTA, but circumstances change (for instance, if a prior “large operating company” which was initially exempt fails to continuously meet the minimum required thresholds), the company would become subject to the reporting requirements of the rule.

If any reported information changes, the reporting company must submit an update within 30 days of the company becoming aware of such change; however, changes with respect to the information of a company applicant are not required to be reported. Additionally, any individual who has obtained an identifying number from FinCEN has an ongoing duty to report any changes to the information they provide within 30 days of the change.

## *Timetable for Implementation and Compliance*

Entities already formed or registered prior to the CTA's effective date of January 1, 2024 will have until January 1, 2025, to submit their initial reports. Entities formed or registered after the effective date must submit their initial reports within 30 days of receiving notice of registration or creation from the relevant secretary of state.

FinCEN has estimated that over 32 million pre-existing entities and roughly five million new reporting companies will be subject to the reporting rule annually over the next decade. Because criminal and civil penalties apply for noncompliance, it is important for affected parties to begin to evaluate their specific circumstances to determine whether they meet any exemption criteria. If you believe you or your company would fall within the scope of the reporting requirements of the CTA, you should begin the process of identifying the reporting entities and individuals and gathering the relevant information for disclosure. For entities that are dormant or not actively engaged in an operating business, you can consider whether it makes sense to terminate such entities or convert the form of ownership into a non-reportable entity type. Fortunately, there is time to assess the applicability of the CTA to your current and future businesses and plan for compliance well in advance of the effective date.

Continue to watch this blog for CTA updates including information that lawyers should know about the CTA, who has access to reported information, and the CTA's impact on financial institutions.

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## About the Author



**Kari Lutringer** represents individuals and entities in a variety of industries including real estate, farming and ranching operations, oilfield services, banking and financial services, and private individuals. Kari's focus is on transactional work, including mergers and acquisitions, dispositions, corporate restructurings, capital transactions, financing and other commercial matters.

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