

Understanding and Navigating the Corporate Transparency Act: A Guide for Businesses

Background and Scope

The Corporate Transparency Act (“CTA” or the “Act”), enacted on January 1, 2021, and set to take effect on January 1, 2024, is federal legislation crafted to bolster law enforcement efforts against money laundering, tax fraud, terrorism financing, and other illicit activities carried out through anonymous shell companies in the U.S. The CTA aims to enhance financial transparency by requiring certain reporting companies to disclose personal information about their beneficial owners and applicants to the Financial Crimes Enforcement Network (“FinCEN”), a federal department dedicated to shielding the U.S. financial system against illicit activities.

The types of companies required to file these beneficial ownership reports will include most small corporations, LLCs, and limited partnerships – even those formed solely for tax or estate planning purposes. The beneficial ownership information of these reporting companies will be stored in a dedicated database within FinCEN, accessible only to law enforcement agencies and financial institutions for the purposes of detecting and preventing financial misconduct in the U.S.

Despite its broad scope, the CTA provides several exemptions. Notably, “large operating companies” with over 20 employees and gross receipts or sales exceeding \$5 million, certain SEC-registered investment companies, and venture capital fund advisers are exempted from the CTA’s reporting requirements. Entities that are wholly owned and operated by another CTA-exempt entity and certain inactive entities may also be exempt from the reporting requirements.

Reporting Obligations Under The CTA

Beginning on January 1, 2024, newly formed entities and foreign entities registering to do business in the U.S. that do not meet an exemption under the CTA must file their first Beneficial Owners Information (“BOI”) report. For entities formed or registered on or after January 1, 2024, they are required to file their initial BOI report within 90 calendar days of formation or registration. However, it's important to note that entities formed or registered on or after January 1, 2025, will have a shorter timeframe, being required to file their initial BOI report within 30 calendar days of formation or registration. The formation date is defined as the date on which the Secretary of State first made actual or public notice that the company was formed. This date is typically stamped on the company's formation document, such as a Certificate of Formation or a Certificate of Incorporation. It can also be found online on the Secretary of State’s website.

Entities that were in existence or registered to do business in the U.S. prior to January 1, 2024, will have until January 1, 2025, to file their initial BOI report, unless an exemption is available. Additionally, any changes to the information provided in the initial BOI report must be reported to FinCEN within 30 calendar days of the change.

Companies that are exempt from the CTA are not required to take any action.

Noncompliance with the CTA, including mistakes, omissions, or late reporting, may result in civil fines of up to \$500 per day for ongoing violations, in certain cases, including fines up to \$10,000 and imprisonment for up to two years. Both the individuals submitting the information and senior officers at the time of the violation could be held responsible.

Determining An Entity's Reporting Status

1. Identify Entity Type:

Determining the applicability of the CTA begins by identifying the types of entities that are subject to the CTA's reporting requirements – these include corporations, limited liability companies (LLCs), limited liability partnerships (LLPs), limited partnerships (LPs), business trusts, and other entities formed through a filing with a secretary of state or a similar office, as well as foreign entities registered to do business in the United States. Notably, sole proprietorships, some general partnerships, foreign entities not registered to do business in the U.S., unincorporated associations, and wealth planning trusts are excluded from the list of reporting companies.

2. Review Available Exemptions:

The next step in determining applicability of the CTA involves reviewing the list of exemptions to determine whether the entity is exempt from the reporting requirements. The list of exemptions include:

- An issuer of securities registered under Section 12 of the Securities Exchange Act of 1934 or required to file supplementary and periodic information under Section 15(d) of the Act.
- A bank, Federal or state credit union, a bank or savings and loan holding company.
- A broker, dealer, exchange, or clearing agency registered under the Securities Exchange Act of 1934.
- A money services business involving currency exchange, check cashing, and money transfer services, regulated under the Bank Secrecy Act and state-level licensing.
- An investment company or investment adviser registered with the Securities and Exchange Commission.
- Other Exchange Act registered entity that is not a securities reporting issuer, broker or dealer in securities, or securities exchange or clearing agency, and is registered with the Securities and Exchange Commission under the Securities Exchange Act of 1934.
- A venture capital fund adviser specializing in advising venture capital funds, which invest in start-up companies with high growth potential.
- An insurance company defined in Section 2 of the Investment Company Act of 1940.

- A state-licensed insurance producer, entities that are licensed to sell, solicit, or negotiate insurance policies.
- A Commodity Exchange Act registered entity involved in trading commodities and related financial contracts, registered under the Commodity Exchange Act.
- An entity established under the laws of the United States, a state, or a political subdivision of a state, or under an interstate compact between two or more states, that exercises governmental authority.
- A public accounting firm registered under the Sarbanes-Oxley Act of 2002.
- A public utility that provides telecommunication services, electrical power, natural gas, or water and sewer services within the United States.
- A financial market utility designated by the Financial Stability Oversight Council.
- A pooled investment vehicle operated or advised by an exempt entity.
- A tax-exempt Section 501(c) corporation, political organization, charitable trust, or split-interest trust exempt from tax.
- An entity assisting a tax-exempt entity providing support services to tax-exempt entities such as charities or non-profit organizations.
- An entity that:
 - Employs more than 20 employees on a full-time basis in the United States;
 - Filed in the previous year Federal income tax returns in the United States demonstrating more than \$5,000,000 in gross receipts or sales; and
 - Has an operating presence at a physical office within the United States.
- Subsidiaries or other similar entities of which the ownership interests are owned or controlled, directly or indirectly, by one or more exempt entities.
- An inactive entity that (a) was in existence before January 1, 2020; (b) is not engaged in active business; (c) is not owned by a foreign person directly or indirectly, wholly or partially; (d) has not experienced any change in ownership in the preceding twelve months; (e) has not sent or received any funds greater than \$1,000, either directly or through any account the entity or an affiliate had an interest, in the preceding twelve months; and (f) does not hold any assets in the U.S. or abroad, including any ownership interests.

3. Identify Beneficial Owners and Applicants:

Entities that are not exempt from the CTA must then identify their beneficial owners and applicants. “Beneficial owners” are defined as individuals who either own or control at least 25% of the ownership interests of the entity or exercise substantial control over the entity. Substantial control is not explicitly defined in the CTA. Generally, it refers to senior officer positions, such as

the CEO, CFO, general counsel, and other comparable roles. It also includes (i) individuals with the authority to appoint or remove key officers or a majority of the board; (ii) individuals with the capacity to influence key decisions; (iii) individuals who steer vital business, financial, or structural decisions; and (iv) any other significant form of substantial control, even in unique ways or flexible corporate structures not explicitly mentioned.

“Applicant” is defined under the CTA as an individual who either directly files the documents required to form or register the reporting company or who is principally responsible for directing or controlling such filings.

4. Information Required to Be Disclosed:

- **For the Reporting Company:**
 - Legal name and any trade names used.
 - Address of the principal place of business.
 - Jurisdiction of formation or registration.
 - Taxpayer Identification Number (TIN) or, for foreign entities, a tax identification number from their jurisdiction.
- **For Beneficial Owners:**
 - Full legal name.
 - Date of birth.
 - Residential address.
 - Unique identifying number from an acceptable identification document (e.g., passport, driver’s license), and the issuing jurisdiction.
 - An image of the identification document.
- **For Company Applicants (entities formed after January 1, 2024):**
 - Full legal name.
 - Date of birth.
 - Business or residential address.
 - Unique identifying number from an acceptable identification document, and the issuing jurisdiction.
 - An image of the identification document.

Ongoing Reporting and Compliance

The CTA not only mandates the initial reporting of beneficial ownership information but also imposes continuing obligations on reporting companies to maintain the accuracy of their submissions. Any changes to the reported details must be captured in an updated report filed within 30 calendar days of the change. It is important to note that modifications regarding company applicants are not subject to this update requirement.

Changes that trigger the need for an updated report could include, but are not limited to, alterations in company details such as a new DBA name, changes in beneficial ownership like a new CEO or

shifts in ownership percentages, and updates to a beneficial owner's personal information. In particular, if a beneficial owner receives a new identification document or if there are changes due to a beneficial owner's death, these must be reported accordingly with supporting documentation.

Furthermore, should any inaccuracies be identified in a previously filed BOI report, a corrected report must be filed no later than 30 calendar days after the discovery of such inaccuracies. This correction must address all information related to the company, its beneficial owners, and company applicants. Importantly, if the corrections are made voluntarily within 90 calendar days of the original report's deadline, the CTA provides a safe harbor from penalties for these corrections.

Reporting entities are required to file both updated and corrected reports through FinCEN's secure electronic filing system. Special circumstances, such as a beneficial owner who was a minor reaching the age of majority, or a company becoming exempt from reporting requirements after having filed a report, must also be reflected in an updated report to accurately capture these new circumstances.

Navigating the BOI Reporting Process

Starting January 1, 2024, the FinCEN will open its portal for filing BOI reports, as required by the CTA. If your entity was formed or registered in the U.S. before this date, you need to file your initial BOI report by January 1, 2025. FinCEN has also released a Small Entity Compliance Guide to help businesses understand these new reporting rules, it can be found at: [Small Entity Compliance Guide](#).

With the CTA's effective date fast approaching, businesses should prioritize understanding the scope of the CTA's applicability and their potential reporting obligations, identifying their beneficial owners and applicants, compiling the information required to be disclosed in the BOI reports, and ensuring that processes are in place for timely BOI reporting and updates.

Our firm is tracking the latest developments related to the CTA, and we are available to assist businesses of all sizes in determining their reporting status and with their ongoing reporting obligations.

If you have any questions concerning this alert, please contact:

Robel Tsegu
rtsegu@hallettperrin.com
214.922.4188

Hallett & Perrin, P.C. provides this information as a service to clients and friends for educational purposes only. It should not be construed or relied on as legal advice or to create an attorney-client relationship. Readers should not act upon this information without seeking advice from an attorney.