

Legal Insights

Practical Legal Solutions



Legal Insights is a newsletter of timely and practical legal information that we hope you can use in your professional and personal pursuits. Please contact your attorney at [Nicola, Gudbranson & Cooper](#) if you have any questions or comments or if you would like to suggest topics of interest for future issues.

[The Corporate Transparency Act is Upon Us – What it Means](#)

By [James R. Chriszt](#) Member

Starting on January 1, 2024, the Corporate Transparency Act (“CTA”) will require many U.S. entities and foreign entities registered to do business in the United States to identify their Beneficial Owners and Applicants to U.S. Department of the Treasury Financial Crimes Enforcement Network (“FinCEN”). 23 types of exempt entities will not be required to report, including publicly traded entities, entities in highly-regulated industries (such as banking, securities and investment, public utility, public accounting, and insurance), governmental authorities, tax-exempt entities, large operating entities, and inactive entities formed before January 1, 2020.

Unless exempt, domestic and foreign entities are required to report to FinCEN if they are “created by the filing of a document” or “registered to do business by the filing of a document” with a secretary of state or similar office in any U.S. state or tribal jurisdiction. This would include, without limitation, corporations, limited liability partnerships, limited liability companies, and limited partnerships. Entities required to report are referred to in the CTA as “Reporting Companies.” Reporting Companies formed on or after January 1, 2024, but before January 1, 2025, must report their Beneficial Owner Information and Applicant Information within 90 days after formation. Reporting Companies formed before January 1, 2024, must

report their Beneficial Owner Information (but not Applicant Information) by January 1, 2025. Reporting Companies formed on or after January 1, 2025, must report their Beneficial Owner Information and Applicant Information within 30 days after formation.

Each Reporting Company is responsible for filing all required reports and can be subject to substantial criminal and civil penalties for failing to do so on a timely basis. Reports will be filed electronically.

The Reporting Company must report its full legal name, any trade names under which it engages in business, its business street address in the United States, jurisdiction of formation or registration, and taxpayer identification number.

The information that must be provided regarding a Reporting Company's "Applicants" (where required) and "Beneficial Owners," as these terms are defined under the CTA, includes each individual's full legal name, date of birth, current residential or, in some cases, business street address, and a unique identifying number from an acceptable identification document (e.g., a driver's license or passport) as well as a copy of that document—or the individual's FinCEN identifier (FinCEN ID), if any.

"Beneficial Owners" is defined very broadly and includes any and all individuals who, directly or indirectly, either (a) exercise "substantial control" over a Reporting Company, or (b) own or control at least 25% of the ownership interests of a Reporting Company.

"Applicants" include (a) the individual who directly and physically files the document that creates a domestic entity or registers a foreign entity, as well as (b) the individual who is primarily responsible for directing or controlling such filings.

In addition to the initial reporting, Reporting Companies must report any changes regarding CTA reports within 30 days of the change. These include changes to senior officers, equity ownership, and contingent rights.

When a Reporting Company becomes aware of an inaccuracy in a previously filed report, it will have 30 days after becoming aware of the inaccuracy to file a corrected report. There is a safe harbor from liability if this report is filed within 90 days after the date on which the inaccurate report was filed.

It is important for all Reporting Companies to develop and implement a CTA compliance policy. Like all complex compliance requirements, it will be critical to keep detailed records regarding CTA compliance decisions and to adopt and consistently apply an entity-wide policy. This policy should document decisions resolving critical remaining ambiguities that impact reporting, designate a responsible individual and a process for documenting and periodically reevaluating exemption decisions, and discuss how the company will monitor changes to Beneficial Owners that may require updates to CTA reports (including changes to the application of CTA exemptions) within relatively short timeframes. Ambiguities and questions should be brought to the attention of the general counsel or outside counsel. Even if FinCEN disagrees with an entity's approach, an organization-wide policy and records of this nature will help to

demonstrate good faith in reporting decisions and support a position that no one within the entity willfully violated the CTA's reporting requirements.

Reporting Companies can make the necessary CTA filings with FinCEN themselves without assistance. Of course, a Reporting Company's attorney or CPA may assist with the CTA filings. Reporting Companies should be wary of official-looking mail from other third parties offering to complete the CTA filings for a fee.

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If you have questions concerning any of the items discussed above, please contact your attorney at [Nicola, Gudbranson & Cooper](#), (216) 621-7227.

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