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Corporate & Finance Alert

The Corporate Transparency Act Takes Effect



By Jay L. Taylor

Key points:

The Corporate Transparency Act, effective 1/1/24, requires that most small and medium U.S. businesses file certain identifying information with FinCEN.

The required report identifies individuals falling under the legislation's definition of "Beneficial Owner."

Public companies, financial institutions, and businesses with more than 20 employees and \$5 million in revenue are exempt from reporting under the legislation.

The Corporate Transparency Act – Public Law No.: 116-283 (the “CTA”) was enacted in 2021, but officially took effect January 1, 2024. The legislation is intended to help law enforcement combat the use of shell companies for terrorism funding, money laundering, tax fraud, and other financial crimes.

The CTA requires that most businesses with fewer than 20 employees, including corporations, limited liability companies, limited partnerships and some trusts, identify their “Beneficial Owners” to the Financial Crimes Enforcement Division (FinCEN), a division of the U.S. Department of Treasury. The required Beneficial Owner Information Report may be completed and filed on FinCEN’s website at <https://boiefiling.fincen.gov>

FinCEN combats financial crimes, including money laundering, terrorism financing, and tax fraud by collecting and evaluating financial data to prevent, detect and punish illegal financial activities. The CTA mandates that entities with no reporting exemption (“Reporting Companies”) submit a Beneficial Ownership Information Report (“BOI Report”) to FinCEN. The BOI Report identifies and records in FinCEN’s database individuals falling under the legislation’s definition of “Beneficial Owner.”

Who is a Beneficial Owner

Under the CTA, an individual qualifies as a “Beneficial Owner” if they own or control (directly or indirectly) at least twenty five percent (25%) of a Reporting Company or exert (directly or indirectly) “Substantial Control” over a Reporting Company. Unless the business qualifies for a reporting exemption, the Beneficial Owner information must be reported to FinCEN. “Substantial Control” includes (i) being a senior officer, (ii) having authority to appoint or remove senior officers or members of the board, (iii) having substantial influence over key decisions or (iii) having any other form of substantial control over a Reporting Company. Whether an individual qualifies as a Beneficial Owner, from a Substantial Control perspective, is a fact-specific analysis to be undertaken by a Reporting Company.

Information to be Provided to FinCEN

Reporting Companies must provide four (4) pieces of information to FinCEN about each Beneficial Owner:

1. name;
2. date of birth;
3. address; and
4. the identifying number and issuer from either a non-expired U.S. driver’s license, a non-expired



U.S. passport, or a non-expired identification document issued by a State (including a U.S. territory or possession), local government, or Indian tribe. If none of those documents exist, a non-expired foreign passport can be used. An image of the document must also be submitted to FinCEN.

A Reporting Company must also submit certain information about itself, such as its name and address. In addition, Reporting Companies formed on or after January 1, 2024, are required to submit information about the individuals who formed the company (“company applicants”).

Exempt Entities

There are 23 exemptions written into the legislation for what would otherwise be Reporting Companies. Most notably, there is a large operating company exemption for companies (i) with over 20 full-time employees, (ii) which have a physical location in the United States that is operational, and (iii) which have over five million dollars (\$5,000,000.00) in gross receipts as reported on its prior year’s federal tax return. The CTA also exempts the following company types from reporting:

- Securities issuers
- Domestic governmental authorities

- Banks
- Domestic credit unions
- Depository institution holding companies
- Money transmitting businesses
- Brokers or securities dealers
- Securities exchange or clearing agencies
- Other Securities Exchange Act of 1934 entities
- Registered investment companies and advisers
- Venture capital fund advisers
- Insurance companies
- State licensed insurance producers
- Commodity Exchange Act registered entities
- Accounting firms
- Public utilities
- Financial market utilities
- Pooled investment vehicles
- Tax exempt entities
- Entities assisting tax exempt entities
- Large operating companies
- Subsidiaries of certain exempt entities
- Inactive businesses

Timing of BOI Reports

Non-exempt companies established prior to January 1, 2024 must file a BOI Report no later than January 1, 2025. Non-exempt Reporting Companies established on or after January 1, 2024,

but prior to January 1, 2025, must file a BOI Report within ninety (90) calendar days of formation. Reporting Companies formed on or after January 1, 2025 must file a BOI Report within thirty (30) days following formation.

Updating the BOI Report

A BOI Report only needs to be filed once, unless the filer needs to update or correct material information. Generally, companies make material changes to reported information on a regular basis. These include changes to a company's legal name, principal business address, assumed name, its CEO, controlling persons, beneficial owners and senior officers with control over the company. Failure to update may result in substantial penalties.

In respect of updating information, any Beneficial Owner who obtains a FinCEN Identifier in the registration process, and whose FinCEN Identifier is reported on the BOI Report (instead of detailed personal information) will be responsible for updating their FinCEN Identifier application if their personal information changes.

Penalties for Failing to Report

Compliance with the CTA is mandatory. If businesses fail to comply with the provisions of the CTA, potential civil and/or criminal penalties may be assessed. Only the eligible company reporting under the CTA is required to file the BOI Report; not individuals. Failure of an eligible company to comply with the CTA and file a BOI Report may subject a Beneficial Owner to civil and criminal penalties. The potential penalties are as follows:

- Assessment of a \$500-per-day for every day the violation continues

(up to \$10,000);

- a prison sentence of up to two (2) years; or
- both a civil fine and prison sentence.

It is therefore important for small businesses and trusts to familiarize themselves with this new legislation and how to report under it to avoid these penalties, which for small businesses are quite substantial.

Similarly, New York State signed into law the "New York LLC Transparency Act," (effective December 24, 2024). This legislation is broadly patterned after the CTA and imposes similar disclosure requirements. It only applies to limited liability companies formed, or authorized to do business, in the state of New York. Beneficial ownership information compiled under the "New York LLC Transparency Act" will be stored in a database maintained by the New York Secretary of State. It will be accessible to federal, state, and local government agencies and law enforcement across New York, but will not be shared publicly.

How the CTA Impacts Trusts

The CTA may apply to certain trusts in one of two ways:

First, individuals with the power to dispose of trust assets who hold ownership interests in a Reporting Company may be deemed to have control over the ownership interests held in trust, and therefore be beneficial owners if such ownership interests are 25% or more of the entity's ownership interests.

Second, business trusts, which include statutory trusts and Massachusetts trusts, may be considered Reporting Companies.

A trust beneficiary will be considered as owning such ownership interests if they have the right to

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withdraw or demand distribution of substantially all of the trust assets or if they are the sole permitted recipient of both the trust's income and principal. Settlers with the power to revoke the trust, or to otherwise withdraw assets from the trust, will also be considered as owning such interests. Trustees will be considered to control such interests if they can dispose of trust assets. Moreover, any individual related to a trust with the power to dispose of trust assets may be considered as holding ownership interests in Reporting Companies held by the trust. The Reporting Company would be required to report identifying information of any

such beneficiary, settlor, trustee or other individual who is considered as owning 25% or more of its ownership interests through a trust. ▲

JAY L. TAYLOR is a shareholder in Anderson Kill's New York office and serves as the practice chair of the firm's Corporate & Finance Group. His practice focuses on corporate and financial structuring, capital markets, swaps and derivatives, exempt securities offerings, private investment funds, and complex business and financial transactions.

jaytaylor@andersonkill.com

(212) 278-1480

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