



The Corporate Transparency Act

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Background, Scope, and Impact

The Corporate Transparency Act (CTA) was enacted on January 1, 2021, and will take effect on January 1, 2024. The compliance requirements of the CTA are significant and represent a paradigm shift in the business world in terms of corporate reporting and disclosure at the federal level. While much still remains unknown as to how the CTA will actually operate in practice, it is very clear that the CTA will have a substantial impact on many individuals, businesses, and organizations, particularly those who own or regularly form multiple entities. Schell Bray PLLC is closely monitoring all developments related to the CTA and is prepared to advise new and existing clients with respect to the extensive compliance requirements set forth in the legislation.

General Requirements

The CTA will require most business entities (referred to as reporting companies) to (a) report certain beneficial ownership information to the US Department of the Treasury's Financial Crimes Enforcement Network (FinCEN), (b) disclose information about who created the entity or registered it to do business in the US, and (c) report any change to previously reported information within a specified time period.

Which Entities are Subject to the Reporting Requirements of the CTA?

With the exception of certain entities that are expressly exempt from the reporting requirements of the CTA (generally due to their size, or because they are subject to existing regulatory oversight schemes) most entities are subject to the reporting requirements of the CTA. Corporations, limited liability companies, and limited partnerships are all potentially subject to the reporting requirements of the CTA.

Which Individuals Must be Identified in Beneficial Ownership Reports?

The CTA requires each reporting company to report certain information related to such reporting company's beneficial owners and company applicants. A beneficial owner is an individual that



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- (a) exercises substantial control over the reporting company, or (b) owns or controls 25% or more of the ownership interests of the reporting company. A company applicant is typically the individual that directly filed the document that created the reporting company. Only reporting companies formed after January 1, 2024 are required to provide information about company applicants.

What Information Must be Disclosed in a Reporting Company's Beneficial Ownership Report?

For each of its beneficial owners and company applicants, the reporting company must disclose (a) the individual's full legal name, date of birth, and complete current address, (b) such individual's identification number set forth on certain permitted forms of identification (most commonly, a US passport or state-issued driver's license), and (c) an image of the identification document from which the identification number was obtained.

Rather than providing a reporting company with all of the items set forth above, a beneficial owner has the option of providing a reporting company with their unique FinCEN identifier (FinCEN ID). The reporting company would report the individual's FinCEN ID on its beneficial ownership report in lieu of listing the specific information described above regarding the individual. Individuals will be able to obtain a FinCEN ID by providing to FinCEN the same information that the individual would be required to provide to a reporting company. If an individual obtains a FinCEN ID, the individual must (i) file an updated application with FinCEN within 30 days after any change in their reported information and (ii) correct any inaccuracy in previously reported information within 30 days of becoming aware of the inaccuracy. Obtaining a FinCEN ID and providing it to reporting companies in lieu of providing the specific information described above will be a particularly useful way for individuals who are classified as a beneficial owner of multiple reporting companies to reduce the administrative burden and security risk of providing personal information to multiple reporting companies. FinCEN has not yet finalized the process for obtaining a FinCEN ID.

A reporting company must also disclose (a) its full legal name, (b) any trade names, doing business as (d/b/a), or trading as (t/a) names through which it conducts business, (c) its complete current address, (d) its state, tribal, or foreign jurisdiction of formation, and (e) its IRS taxpayer identification number (TIN), including an employer identification number (EIN).



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When Are Reports Required to be Filed?

Reporting companies created prior to January 1, 2024 have until January 1, 2025 to file their initial beneficial ownership reports. Reporting companies created on or after January 1, 2024 have 30 days to file their initial beneficial ownership reports.¹

Additionally, if an exempt entity no longer qualifies for an exemption from the reporting requirements of the CTA, it must file an initial beneficial ownership report within 30 days after the date the exemption ceased to apply. If any required information regarding the reporting company or its beneficial owners changes, the reporting company must update its previously filed reports within 30 days.

Who Can Access Beneficial Ownership Reports and What are the Penalties for Failure to Comply?

FinCEN will store the beneficial ownership information reported under the CTA in a secure nonpublic database that is accessible primarily by law enforcement officials. The CTA provides for civil and criminal penalties for violations, including a fine of up to \$10,000, imprisonment for up to two years, or both.

¹ On September 27, 2023, FinCEN issued a Notice of Proposed Rulemaking that, if finalized, would extend the filing deadline from 30 days to 90 days for reporting companies created on or after January 1, 2024.