

AN A.S. PRATT PUBLICATION

JANUARY 2024

VOL. 10 NO. 1

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CYBERSECURITY
LAW**
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The Corporate Transparency Act: What Companies Need to Know

*By John K. Tokarz and Robert F. Henkle, Jr.**

In this article, the authors outline what the Corporate Transparency Act is and its reporting requirements.

If you are the owner or controller of a U.S. entity, or plan to establish one in the future, it is important to know about the new federal reporting obligations under the Corporate Transparency Act (CTA), which took effect on January 1, 2024. These new reporting requirements will apply to millions of business and non-business entities, including the smallest corporations and limited liability companies. While the U.S. Department of Treasury's Financial Crimes Enforcement Network (FinCEN), is still developing and finalizing rules and procedures for the CTA's reporting requirements, companies need to understand and prepare for the upcoming deadlines to avoid potential penalties.

This article outlines what the CTA is and its reporting requirements.

WHAT IS THE CORPORATE TRANSPARENCY ACT?

The CTA is the result of comprehensive revisions to U.S. anti-money laundering statutes, and it aims to bolster law enforcement efforts surrounding money laundering, tax fraud and other illicit activities conducted through anonymous shell companies. The CTA hopes to do this through the maintenance of a secure, non-public national database of beneficial ownership information (BOI) of certain business entities. FinCEN will oversee this database and the reporting process. The CTA provides for civil and criminal penalties for failure to comply with its reporting requirements.

WHO DOES THE CTA APPLY TO?

The CTA imposes reporting obligations on non-exempt domestic and foreign entities that are formed or registered by filing a document with a secretary of state or any similar office of a U.S. state, territory or tribal jurisdiction.

There are 23 categories of exempt entities, including:

- *Large Operating Companies* – Entities with more than 20 full-time employees in the United States, a U.S. operating presence and more than \$5 million in U.S.-sourced revenue (including such entities' direct or indirect wholly-owned subsidiaries).

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- *Regulated Entities* – Including public companies, public accounting firms and certain companies in the banking, insurance and securities industries.
- *Tax-Exempt Entities* – Including 501(c)(3) organizations and other tax-exempt entities. There are several other exemptions that may apply in specified, limited circumstances. The exemption provisions are detailed and qualification may require intensive analysis of the facts and circumstances.

WHAT ARE THE BOI REPORTING REQUIREMENTS?

Reporting companies will be required to complete and file a BOI report. In this BOI report, the reporting company will be required to identify (1) its “beneficial owners” and (2) in the case of a reporting company that is created or becomes a foreign reporting company on or after January 1, 2024, its “company applicant(s).”

The term “beneficial owner” means any individual (natural person) who, directly or indirectly, either: (a) exercises “substantial control” over the reporting company, or (b) owns or controls 25 percent or more of the ownership interests of the reporting company.

Those exercising “substantial control” include certain senior officers, individuals with authority over the appointment or removal of senior officers and individuals that direct, determine or that have substantial influence over important decisions made by the reporting company. The 25 percent ownership prong defines the term “ownership interests” broadly to include stock, capital or profits interests, convertible instruments, warrants and puts, calls and other options.

For each “beneficial owner,” the BOI report will list its:

- (1) Full legal name;
- (2) Date of birth;
- (3) Complete address; and
- (4) Government identification information, including an ID number and image of the ID document.

Reporting companies created or first becoming a foreign reporting company after January 1, 2024, will also report similar information on “company applicant(s),” up to two individual(s) responsible for forming or registering a reporting company. This includes both the individual directing the incorporation or registration and the individual making the filing.

WHEN MUST BOI BE REPORTED?

Under current FinCEN proposals, legal entities that qualify as a reporting company and that are formed on or after January 1, 2024, and before January 1, 2025, must file their initial BOI report within 90 days of entity creation or qualification as a foreign reporting company. Entities that are created or that become foreign-qualified prior to January 1, 2024, must file their initial BOI report by January 1, 2025. Legal entities that qualify as a reporting company and that are formed on or after January 1, 2025, must file their initial BOI report within 30 days of entity creation or qualification as a foreign reporting company.

After filing the initial BOI, the CTA also obligates reporting companies to file any changes to the BOI (within 30 days). Qualifying changes include a change to BOI previously reported, exemption status changes and more.

Additionally, reporting companies must correct any inaccuracies promptly after discovery to take advantage of safe harbor rules regarding liability. There are no fees contemplated for the initial BOI reports or subsequent updates.

WHERE WILL BOI BE REPORTED?

FinCEN is in the process of creating a secure, non-public database (referred to as the Beneficial Ownership Secure System (BOSS)), which was not open for filing BOI reports before January 1, 2024. The BOSS database will be administrated by FinCEN directly and FinCEN has indicated it will not charge a fee to reporting companies. FinCEN may disclose the reported BOI only on receipt of a request, made through appropriate protocols, by certain government agencies and law enforcement, and to financial institutions subject to customer due diligence requirements (with the consent of the reporting company). FinCEN has also adopted rules regarding who may access reported BOI and the purposes for which they may do so and establishing safeguards to ensure that the BOI is secured and protected.

WHAT PENALTIES DOES THE CTA IMPOSE?

There are civil and criminal penalties for violations of the BOI reporting requirements. Any person who violates the reporting requirements may be liable for civil penalties of up to \$500 for each day the violation continues. Additionally, violators may be criminally liable for the same violations and may face imprisonment of up to two years and fines of up to \$10,000. However, the CTA provides a safe harbor of 90 days after the initial reporting of BOI, under which reporting companies may correct the information and avoid civil and criminal liability.

WHAT SHOULD COMPANIES DO?

While several aspects of the CTA implementation remain in flux, you should begin preparing now. Key steps include:

1. Identify someone in your organization who will be responsible for becoming informed about and complying with the CTA requirements.
2. Determine whether one or more of your entities is or will be subject to CTA reporting.
3. Determine the filing deadline for any required BOI report.
4. Review the guidance provided on the FinCEN website,¹ and identify beneficial owners who will need to provide information. The FinCEN website includes a detailed compliance guide, compliance questions and FAQ list.

¹ <https://www.fincen.gov/boi/small-business-resources>.