Insights: Alert

EFFECTIVE JANUARY 1, 2024 - Corporate Transparency Act (CTA) Requirements

December 20, 2023

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EFFECTIVE JANUARY 1, 2024 - CORPORATE TRANSPARENCY ACT (CTA) WILL REQUIRE MOST CORPORATE AND OTHER BUSINESS ENTITIES TO FILE WITH FINCEN AND PROVIDE INFORMATION RELATED TO THEIR BENEFICIAL OWNERS

Does the CTA apply to my company?

Reporting companies include corporations, LLCs, limited liability partnerships, limited partnerships, and business trusts, and comprise not only companies formed in the United States but also foreign entities that register or qualify to do business in any state.

There are, however, 23 categories of exempt entities, including:

- SEC reporting companies
- "Large operating companies" that have:
  - More than 20 full-time employees in the United States
  - More than $5 million in gross receipts or sales on their federal income tax return
  - A physical U.S. office
- Certain regulated entities, including banks, credit unions, tax-exempt entities registered with the IRS, public utilities, investment advisers, investment companies, broker-dealers, accounting firms, and insurance companies
- Subsidiaries of exempt entities

If the CTA does apply, when does my company have to file/update?

It depends when the company was formed:

- **Formed prior to January 1, 2024** – prior to January 1, 2025
- **Formed January 1, 2024 – January 1, 2025** – within 90 days of formation
- **Formed after January 1, 2025** – within 30 days of formation

- **Updates-** *within 30 days of any change*, all reporting companies have the responsibility to update and correct their reports as needed.

What is the purpose of the CTA?

The CTA is intended to enhance transparency in corporate structures and ownership as an effort to combat money laundering, tax fraud, financing of terrorism, organized crime, and other illicit activity.The Financial Crimes Enforcement Network (FinCEN) oversees the program and is charged with protecting the data and information provided by reporting companies.

What type of information do Reporting Companies have to provide FINCEN?

Company Information:

- Legal name and any trade name or “doing business as” name
- Address
- Jurisdiction in which the entity was formed or first registered
- Employer Identification Number (EIN) or Taxpayer Identification Number (TIN)

Beneficial Owner Information (BOI):

A beneficial owner is any individual who exercises “substantial control” over the reporting company, or an individual who owns or controls at least 25% of the reporting company. The company must provide the following information for each beneficial owner:

- Legal name
- Date of birth
- Address (in most cases, a home address)
- An identifying number from a driver's license, passport, or other approved document
- An image of the approved document for each individual

An individual possesses “substantial control” over a reporting company if they:

- Are a senior officer, including the CEO, president, CFO, COO, or general counsel
- Have the authority to appoint or remove senior officers or a majority of the board of directors
- Are an important decision-maker with substantial influence over important company decisions
- Have any other form of substantial control over the company

Company Applicant:

Reporting companies must provide the same individual information as BOI for the person(s) who file the document that creates or registers the company. There can be up to two individuals who qualify as company applicants:

- The individual who directly files the document that creates, or first registers the company
- If more than one individual is involved in filing the document, the individual who is primarily responsible for directing or controlling the filing

How do I file?

Filings will be made electronically through a web-based system at fincen.gov/boi. FINCEN will not accept filings prior to January 1, 2024.

What are the penalties for noncompliance?

The CTA has both civil and criminal penalties for willful noncompliance, which include personal liability for the company applicants. Penalties may include a daily $500 fine for a continuing violation (up to a maximum of $10,000) and up to two years' imprisonment.

Will FINCEN contact me prior regarding the CTA prior to January 1, 2024?

NO. Any email or letter from FINCEN asking the recipient for information under the CTA is fraudulent, as FinCEN does not send any unsolicited requests. Do not respond to these messages or click on any links or scan any QR codes within these fraudulent messages.

What should my company do?

Please contact us with any questions, including:

- For currently existing entities—contact our team to discuss the CTA and potential reporting exemptions
- Entities to be formed after January 1, 2024—Kilpatrick can advise you on potential requirements under the CTA related to such entity
- Updates to BOI reports—reporting companies will need to notify beneficial owners and company applicants of the requirements to update information. Reporting companies should consider updating relevant corporate documents, such as stockholder agreements, to reflect these obligations

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