

FAQs

What is the Corporate Transparency Act?

The Corporate Transparency Act (the “CTA”) is a law that will require certain business entities (“reporting companies”) to submit reports to the Financial Crimes Enforcement Network of the Department of the Treasury (FinCEN) disclosing the identities and other personal information of their beneficial owners and their company applicants.

What is the timeline for compliance?



The CTA will take effect on **January 1, 2024**. Any reporting company formed on or after the effective date and before January 1, 2025 will have **90 calendar days** to submit an initial beneficial ownership information (BOI) report. Reporting companies formed thereafter will have 30 calendar days to submit their initial BOI report. A reporting company in existence prior to January 1, 2024 will have until January 1, 2025 to submit an initial BOI report.

What qualifies as a “reporting company”?

The CTA defines a reporting company as any non-exempt entity created or registered to do business in the U.S. by the filing of a document with a Secretary of State or any similar office under the laws of a state or tribe (e.g., corporations, LLCs, and LLPs). Entities not created by such a filing, like many trusts, are not subject to the CTA.



What types of entities are exempt?

The CTA enumerates 23 exemptions. These are generally types of entities that are already highly regulated and include, among others:

- Banks and credit unions
- Insurance companies
- Public accounting firms registered with the Public Company Accounting Oversight Board
- Public utilities
- Organizations described in §501(c) of the Internal Revenue Code of 1986 (determined without regard to §508(a) of such Code) and exempt from tax under §501(a) of such Code, political organizations, and certain trusts
- Public companies
- Registered investment companies and registered investment advisers
- “Large operating companies” defined as entities that (a) employ more than twenty full-time employees in the U.S.; (b) have an operating presence at a physical office in the U.S.; and (c) filed a U.S. federal tax return for the previous year demonstrating more than \$5,000,000 in gross receipts or sales, on a consolidated basis, from U.S. sources
- “Inactive entities” defined as entities that (a) existed on or before January 1, 2020; (b) are not engaged in active business; (c) are not wholly owned, directly or indirectly, by a foreign person; (d) have not experienced a change of ownership in the preceding twelve months; (e) have not sent or received more than \$1,000 in the preceding twelve months; and (f) do not otherwise hold any type of asset, including ownership interest in another entity
- Subsidiaries wholly owned, directly or indirectly, by one or more exempt entities (with a few exceptions)

If an entity meets any exemption, it is not required to report to FinCEN. An exempt entity that later ceases to qualify for an exemption generally has 30 calendar days to file an initial report. A reporting company that has submitted an initial report and later qualifies for an exemption is required to notify FinCEN that it has become exempt.

What information must be included in a report?

A report must include information pertaining to the company itself, each beneficial owner, and, if the company was formed on or after January 1, 2024, the “company applicants.” There can be up to two company applicants for a reporting company: (a) the person who directly files the formation or registration documents of a reporting company, and (b) the person primarily responsible for directing or controlling such filing. Entities formed prior to January 1, 2024 are not required to submit company applicant information.

Company information:

- Full legal name
- Any tradename or d/b/a name
- Street address of principal place of business in the U.S.
- Jurisdiction of formation (or registration in the U.S., if foreign)
- IRS TIN (or foreign tax ID)

Beneficial owner and company applicant information:

- Full legal name
- Date of birth
- Residential street address
- In the case of a company applicant who forms companies in the ordinary course of business (e.g., a paralegal or formation agent), the business address of the company applicant should be used instead
- ID number and issuing jurisdiction of a non-expired U.S. passport, U.S. driver’s license, U.S. government-issued ID or, if the individual possesses none of those, a foreign passport
- An image of the aforementioned ID

Who is a “beneficial owner” under the CTA?

A beneficial owner is any individual who, directly or indirectly, (a) owns or controls 25% or more of the entity’s ownership interests; or (b) exercises substantial control over an entity (e.g., a senior officer), whether or not such person has any ownership interest in the entity. Note that the CTA is looking for disclosure about natural persons, so there will need to be a look-through of entity owners to determine beneficial ownership.

A beneficial owner does not include (i) a minor child; (ii) a nominee, intermediary, custodian, or agent acting on behalf of another individual; (iii) a non-officer employee whose interest is solely through the individual’s employment status; (iv) an individual whose interest is solely through a right of inheritance; or (v) a creditor who would otherwise meet the definition of a beneficial owner solely through rights to payment.

What is “substantial control”?

An individual exercises substantial control over a reporting company if the individual meets any of four general criteria: (1) the individual is a senior officer; (2) the individual has authority to appoint or remove certain officers or a majority of directors of the reporting company; (3) the individual is an important decision-maker; or (4) the individual has any other form of substantial control over the reporting company.

What if BOI in the initial report changes or incorrect information is submitted?

Reporting companies have an obligation to amend reports within 30 calendar days after any submitted information changes or after discovering an error. A change that would necessitate submitting an amendment could concern the company (e.g., a new CEO is appointed, or the company undergoes a merger) or any existing individual beneficial owner (e.g., a beneficial owner changes their name or address) or a change in beneficial owners.

What are the penalties for non-compliance?

The CTA authorizes civil and criminal penalties for willful failure to report complete or updated information. Violators can incur a civil penalty of up to \$500 for each day that a violation has not been remedied and a fine of up to \$10,000 and/or imprisonment for up to two years. FinCEN has stated that it does not expect that inadvertent mistakes made in good faith will constitute a violation, but reporting companies should not assume that they will receive grace from FinCEN.

Where and how are BOI reports submitted?

FinCEN has developed what is supposed to be a secure filing system known as BOSS (Beneficial Ownership Secure System) for e-filing BOI reports. It may be accessed at: <https://boiefiling.fincen.gov/> and filings may be done online or prepared in a fillable PDF or submitted by service providers in a system-to-system Application Programming Interface (API).

Are there other resources I can review on this topic?

FinCEN has posted a list of [FAQs](#) and a simplified [Small Entity Compliance Guide](#) to its website. Practical Law has informational entries and sample language for some corporate documents, which are posted on our Intranet site under Resources – Corporate Transparency Act. Many law firms and legal associations have written articles and alerts, some of which pertain to the CTA’s application to discrete areas of law.

