

The Corporate Transparency Act: What You Need to Know

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In September 2022, the U.S. Department of the Treasury's Financial Crimes Enforcement Network ("FinCEN") issued a Final Rule addressing reporting obligations concerning beneficial ownership information ("BOI") under the Corporate Transparency Act ("CTA"). This regulation aims to enhance the capabilities of national security, intelligence, and law enforcement agencies in combating illicit activities. Consequently, certain types of U.S. and foreign entities must disclose BOI to FinCEN regarding their beneficial owners and individuals responsible for registering or forming the Reporting Companies (as defined below). FinCEN will release the reported information to authorized government agencies, financial institutions, and other authorized users, with stringent safeguards and oversight.

The Final Rule will have significant implications for the operational and compliance frameworks of numerous businesses. All companies that do not fall within one or more of the twenty-three (23) exemptions set forth in the Final Rule ("Reporting Companies"), must file reports with FinCEN which include personal information on beneficial owners and control persons.

There are two types of Reporting Companies: (1) domestic reporting companies, and (2) foreign reporting companies.

- A *domestic reporting company* is defined as a corporation, a limited liability company, or any other entity created by the filing of a document with a secretary of state or any similar office under the law of a U.S. state (includes Puerto Rico) or Indian tribe.
- A *foreign reporting company* is defined as a corporation, limited liability company, or other entity formed under the law of a foreign country, **and** registered to do business in any U.S. state or in any Tribal jurisdiction, by the filing of a document with a secretary of state or any similar office under the law of a U.S. state (includes Puerto Rico) or Indian tribe.

A beneficial owner is defined as (i) an individual who, directly or indirectly, exercises "substantial control" over the entity (including, but not limited to, senior officers) or (ii) owns or controls at least 25% of the ownership interests of

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the Reporting Company. Members of a Reporting Company's Board of Directors may also be deemed to have "substantial control," depending on the corporate governance structure of the Reporting Company.

Additionally, all Reporting Companies established on or after January 1, 2024, must disclose information about the person(s) who file their incorporation or organization documents with the corresponding secretary of state (referred to as "Company Applicant(s)").

Key Deadlines

Companies must meticulously review their ownership structures, identifying individuals who qualify as beneficial owners under the CTA and gather all pertinent information. Proactive measures are necessary to meet the required deadlines.

For Reporting Companies established before January 1, 2024, the deadline for submission of their reports is January 1, 2025.

Reporting Companies formed or registered between January 1, 2024 and December 31, 2024, must submit their report within 90 calendar days of such formation or registration. Those formed or registered on or after January 1, 2025, must submit their report within 30 calendar days of such formation or registration.

After the initial report is filed with FinCEN, Reporting Companies will have to make additional filings if there are any changes to their reported information, which must be filed within 30 days after each change.

Penalties for failure to comply with the reporting requirements

The willful failure to report complete or updated BOI to FinCEN, or the willful provision of or attempt to provide false or fraudulent BOI may result in civil or criminal penalties, including civil penalties of up to \$500 for each day that the violation continues, and/or criminal penalties including imprisonment for up to two years and/or a fine of up to \$10,000 (which does not include potential state penalties).

Penalties may also apply to Reporting Companies and individuals who:

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- Cause a Reporting Company not to report.
- Are senior officers of a Reporting Company at the time of its failure to fulfill its obligation to accurately report or update BOI.

The Final Rule becomes effective on **January 1, 2024**.

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