



ALERT REGARDING THE CORPORATE TRANSPARENCY ACT

October 8, 2024

You are likely aware of the new federal law known as the Corporate Transparency Act (“CTA”)ⁱ which impacts almost everyone involved in the formation, operation, ownership and maintenance of legal entities such as limited liability companies, corporations and limited partnerships. There have been legal challenges to the new law, and at some point it may in fact be overturned, but until then, [compliance is required](#).

The following is a brief and general introduction to the CTA and certain key dates and concepts that you will want to keep in mind going forward. This is not intended to be an exhaustive discussion or treatise on all the ins and outs of the CTA and your obligations under it, or a substitute for reviewing the regulations and guidance documents from FinCEN (links below). The purpose of this alert is to provide a general primer about the CTA to get you focused on this new legal requirement so you can set up a system to manage your obligations under this new law.

The most important point of this alert is to remind you that the CTA exists and that you or someone within your organization is likely obligated to comply with the CTA and cause filings to be made and kept up to date. For any *entities formed prior to 1/1/2024 initial reports must be filed by end of this year (12/31/2024)*. For any *new entities formed during this year initial reports must be filed within 90 days of formation* (and such 90-day period becomes 30 days on 1/1/2025).

Any person who willfully provides false or fraudulent beneficial ownership information to FinCEN or willfully fails to report complete or updated beneficial ownership information is liable for a civil monetary penalty which was, as of April 18, 2024, \$591.00ⁱⁱ for each day of noncompliance, and a criminal fine not to exceed \$10,000.00 and/or up to two (2) years of jail time. The CTA is intendedⁱⁱⁱ to prevent bad actors from using entities to hide their identity from law enforcement and regulatory agencies^{iv}.

The CTA.

The CTA is applicable to all domestic entities (including corporations, limited liability companies and limited partnerships) and foreign entities doing business in the United States (referred to in the CTA as a “**Reporting Company**”), unless an exemption applies. Most of our clients’ entities and most of the entities you are likely to encounter are not going to be exempt from the CTA.^v You will need to file within the required timelines discussed below a beneficial ownership information report and keep it current for all entities unless they are exempt.

The Initial Reporting Requirement.

The essence of the reporting obligation is that all non-exempt Reporting Companies have to file an initial report listing all of the “Beneficial Owners” of all Reporting Companies, together with

certain identifying information about each beneficial owner of each Reporting Company, the Reporting Company itself, and the parties responsible for forming the Reporting Company (the “**Company Applicants**”) for Reporting Companies formed after January 1, 2024. Certain deadlines for the initial reports are set forth in the chart below.

Fortunately, the filing process itself is not difficult and you should be able to easily navigate the process. For simple limited liability companies with one or two members and/or managers, and no other parties indirectly or directly involved, compliance should be fairly easy and straightforward.

The hard parts of compliance may be (i) identifying all of the Beneficial Owners when a Reporting Company has a complex ownership and governance structure or utilizes complex or unconventional funding and (ii) setting up a system to manage the ongoing reporting requirements to keep previously reported beneficial ownership information current and to report changes within thirty (30) days of those changes.

“**Beneficial Owners**”^{vi} under the CTA are any individuals who, either *directly or indirectly*, (i) exercise substantial control over a particular entity or (ii) own or control 25 percent or more of the ownership interests of the entity. “*Substantial control*”^{vii} and “*ownership interests*”^{viii} are defined very broadly and there is no limit to the number of Beneficial Owners a Reporting Company can have. See also [FinCEN’s Small Entity Compliance Guide](#) Chapter 2.3 for a detailed step-by-step outline of how to determine a company’s beneficial owners.

Any individual who falls under any one or more of the following categories exercises “**substantial control**” over a Reporting Company. See [FinCEN FAQ D. 2](#) and the [CTA regulations 31 C.F.R. § 1010.380 \(d\) \(1\)](#).

1. Senior Officers (a Reporting Company’s “president, chief financial officer, general counsel, chief executive officer, chief operating officer, or any other officer who performs a similar function”);
2. Individuals who have authority to appoint or remove certain officers or a majority of directors (or similar body) of the reporting company;
3. Individuals who are an important decision-maker for the Reporting Company or who have substantial influence over important decisions, including decisions regarding the following which are particularly relevant to entities in the real estate industry: “the sale, lease, mortgage, or other transfer of any principal assets of the reporting company”; “major expenditures or investments, issuances of any equity, incurrence of any significant debt, or approval of the operating budget of the reporting company”; and “the entry into or termination, or the fulfillment or non-fulfillment, of significant contracts”; and
4. Catchall – Individual who have any other form of substantial control over the reporting company. See also [FinCEN’s Small Entity Compliance Guide](#) Chapter 2.1.

Note that by merely being a senior officer, an individual becomes a Beneficial Owner even if the actual control the senior officer has the power to exert is, in fact, less than “substantial”. The other categories, including the fourth catchall category, ensure that anyone who actually does

have the power to exert substantial control is required to be reported as a Beneficial Owner.

The definition of “**ownership interests**” goes far beyond a membership interest in a limited liability company or stock in a corporation. “**Ownership interests**” include, for example, among other arrangements and forms of interests, the following. See [FinCEN FAQ D.4.](#) and [CTA regulations 31 C.F.R. § 1010.380 \(d\) \(2\) \(i\).](#)

1. Equity, stock, or other interests in any entity;
2. Capital or profits interests;
3. Instruments convertible into any equity, stock, capital, profits or other similar interests; futures, warrants or rights to purchase or sell any interests;
4. Any put, call, straddle or other option for any of the interests described in 1, 2 and 3; and
5. A catchall – “any other instrument, contract, arrangement, understanding, relationship, or mechanism used to establish ownership.”

The regulations provide for specific rules for calculating and determining total ownership interests for purposes of determining whether or not the 25% threshold has been met. See [FinCEN’s Small Entity Compliance Guide](#) Chapter 2.3 and [CTA regulations 31 C.F.R. § 1010.380 \(d\) \(2\) \(iii\).](#)

Ongoing Reporting Requirement.

Once initial reports have been filed, there is an ongoing obligation to file notice of any changes to any of information previously reported within 30 days of the change. There will be no warning letters from the government, and there is no annual reporting requirement. You are charged with monitoring changes and reporting them.

For example, any of the following would trigger a reporting obligation: if an entity elects a new CEO or president or any other officers who qualify as Beneficial Owners; if in an entity owned by 3 individuals, one dies and a new member or the estate of deceased member steps in; if one of the Beneficial Owners or the Reporting Company entity itself moves causing a change to its reported address; or if an entity adopts a new D/B/A or changes its name. Any changes to the previously reported beneficial ownership information for a Reporting Company entity must be updated within thirty (30) day of changes, so the above examples are not exhaustive and there are other types of changes that require an update to a Reporting Company’s prior report. As noted above, the CTA and the rules provide certain civil and criminal penalties for entities that do not file the beneficial ownership information reports accurately and timely or for individuals that fail to provide accurate and complete personal information.

Privacy Considerations.

We note that there are laws that impose stringent obligations of confidentiality and privacy on those who possess confidential information such as SSN’s, EIN’s, driver’s licenses, etc. You may want to consider whether it serves your purposes holding onto that information once you have completed your filing. In addition, Company Applicants and Beneficial Owners can obtain what

is called a FinCEN ID # by providing the information noted above. A person who has a FinCEN ID # can provide the FinCEN ID # to the Reporting Company in lieu of the personal identifying information noted above and such person is responsible for keeping their identifying information up to date through their FinCEN ID#. It is our current recommendation in most cases that Reporting Company's request their Beneficial Owners and Company Applicants obtain FinCEN ID #s for purposes of beneficial ownership filings. This will make the filing process more efficient and cut down on some data privacy risks.

Certain Key Dates and Timelines:

January 1, 2024	The date that CTA's reporting requirements commenced and became effective.
90 days	The number of days that a Reporting Company which was formed in 2024 has after its formation to make the initial CTA filing.
30 days	The number of days that a Reporting Company formed after 2024 has after its formation to make the initial CTA filing.
January 1, 2025	The deadline for making the initial CTA filing for a Reporting Company which existed prior to January 1, 2024.
30 days	The number of days after a change to any previously filed CTA information to file an update.

Assistance.

There are a number of services in place that can assist you with the initial filings and also with the ongoing management and continuing filing obligation that is now imposed upon you. However, these services are all new and their utility and ability to safekeep sensitive personal data is still untested.

Our firm can advise you on the law and questions related to the law, but the individual company owners will have to handle the initial and ongoing registration and reporting either personally or through one of the filing services.

There are resources available such as those which may be found on FinCEN's website. FinCEN's [Small Business Compliance Guide](#) and [FAQ](#) page which have been hyperlinked to in this alert

are very helpful informational resources. The FinCEN FAQ page is updated on an ongoing basis as the CTA is implemented and rolled out.

For most Reporting Companies existing on or prior to 12/31/23, it has made sense to wait until later in 2024 to comply with the CTA to allow for some of the kinks to be worked out of the system and also to see if the current litigation challenging the law provides some guidance. There is also some talk that the year end deadline for pre-2024 entities to file could be extended although as of this alert that has not come to fruition. As the fourth quarter of 2024 begins, now is the time to start preparations for CTA compliance, especially if any of the following circumstances apply to you, your entities or organizations, or when the following events arise:

1. If your organization has a complicated ownership, funding or governance structure with several underlying entities.
2. If your organization has difficult to reach Beneficial Owners.
3. If an opportunity arises to amend or modify an entity's governing documents to include provisions addressing the CTA.

Resources and Further Information:

- [FinCEN Beneficial Ownership Information Website](#)
- [FinCEN Small Entity Compliance Guide](#)
- [FinCEN Frequently Asked Questions](#)
- [FinCEN's BOI E-Filing System Help & Resources \(quick references and step-by-step guides to filing process\)](#)
- [NC Secretary of State Bulletin re: Beneficial Ownership Reporting](#)
- [CT Secretary of State Notice re: Beneficial Ownership Information](#)

Disclaimer.

This Alert is provided for informational purposes only. It does not constitute legal or tax advice and does not create an attorney-client relationship, or an undertaking by our firm to provide further updates or reminders about the CTA or other new laws.

ⁱ The CTA's stated purpose is to prevent people from using entities to operate with anonymity and hide from the US government. See FinCen's FAQ Question A2 (https://www.fincen.gov/boi-faqs#A_2)

ⁱⁱ See FinCEN's FAQ Question K.2. https://www.fincen.gov/boi-faqs#K_2 ("As specified in the Corporate Transparency Act, a person who willfully violates the BOI reporting requirements may be subject to civil penalties of up to \$500 for each day that the violation continues. However, this civil penalty amount is adjusted annually for inflation. As of the time of publication of this FAQ, this amount is \$591. A person who willfully violates the BOI reporting requirements may also be subject to criminal penalties of up to two years imprisonment and a fine of up to

\$10,000. Potential violations include willfully failing to file a beneficial ownership information report, willfully filing false beneficial ownership information, or willfully failing to correct or update previously reported beneficial ownership information.”)

ⁱⁱⁱ See FinCen’s FAQ Question A2. https://www.fincen.gov/boi-faqs#A_2

^{iv} Financial Institutions will also have access to the information required to be filed and reported with the consent of the entities. We expect lenders and financial institutions to require such consent as a condition to doing business going forward.

^v The exempt entity types are generally limited to entities which are already subject to regulatory disclosure requirements such as banks, securities broker/dealers and public companies and certain tax-exempt entities. See FinCen’s FAQ Question C2 (https://www.fincen.gov/boi-faqs#C_2)

^{vi} See FinCen’s FAQ Question D1. https://www.fincen.gov/boi-faqs#D_1

^{vii} See FinCen’s FAQ Question D2 https://www.fincen.gov/boi-faqs#D_2

^{viii} See FinCen’s FAQ Question D3 https://www.fincen.gov/boi-faqs#D_3