



corporate transparency act goes effective january 1, 2024

Anthony A. Adler & Mark T. Hiraide
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Beginning January 1, 2024, a new federal law will require most newly formed business entities to report information to the U.S. government about who ultimately owns and controls them. Business entities formed prior to January 1, 2024 that are not "large operating companies," and do not fall under another exemption, will have one year to file the same information. Congress enacted the new law, the Corporate Transparency Act ("CTA"), in 2021 to enhance transparency in entity structures and beneficial ownership to combat money laundering, illegal tax avoidance and other illicit activities. The CTA requires the filing of a beneficial ownership information report ("BOIR") by "Reporting Companies" with the Financial Crimes Enforcement Network ("FinCEN"), which is part of the U.S. Department of the Treasury.

"Reporting Companies" are most corporations, limited liability companies, business trusts, limited partnerships and other entities that are created by filing a document, e.g., certificate of incorporation, certificate of formation or certificate of limited partnership, with the secretary of state or similar office of any U.S. state, U.S. territory or U.S. federally recognized Indian tribe ("Government Agency"). "Reporting Companies" also include a foreign-formed entity which qualifies to conduct business by registering with any Government Agency.

Under the CTA there are 23 categories of entities which are exempt entities and therefore are not required to file BOIRs. These exempt entities include, among others:

- "Large operating companies" which are entities that (i) have more than 20 full-time U.S. employees (not counting employees of affiliated entities), (ii) reported more than \$5 million of revenue from U.S. sources on a consolidated basis to the IRS for the previous year and (iii) have an operating presence at a physical location in the United States.

attorneys

Anthony A. Adler
Mark T. Hiraide

practice areas

corporate & business transactions



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- Most companies with outstanding securities that are publicly traded in the U.S.
- Tax exempt entities.
- Pooled investment vehicles operated or advised by certain entities, including, a venture capital fund advisor, registered investment adviser or broker-dealer.

The BOIR must include information regarding (a) the Reporting Company, e.g., full name and address of the Company, jurisdiction of formation and EIN as well as all tradenames and DBAs, (b) each "Beneficial Owner" of the Reporting Company, e.g., full name, date of birth and a complete current address as well as a copy of an identification document of such individual such as a passport or driver's license and (c) for any Reporting Company formed or registered in the U.S. on or after January 1, 2024, up to two "Company Applicants", e.g., similar information as for a Beneficial Owner. The information is not publicly accessible. CTA imposes strict confidentiality, security, and access restrictions on the data FinCEN collects.

The general rule is that "Beneficial Owner" is an individual who (i) directly or indirectly exercises "Substantial Control" over the Reporting Company, or (ii) owns or controls not less than 25% of the ownership interests in the Reporting Company. It is essential to understand what the CTA deems to be "Substantial Control" and how someone can be deemed to a 25% owner notwithstanding the lack of a direct ownership interest in the Reporting Company. Reporting Companies are required to identify in the BOIR all individuals who exercise "Substantial Control". A person has "Substantial Control" of a Reporting Company if such individual meets any of the following four general criteria:

1. the individual is a senior officer, i.e., president, chief executive officer, chief operating officer, chief financial officer, general counsel or any other officer regardless of title, who performs a similar function as these officers;
2. the individual has authority to appoint or remove certain officers or directors (or members of other governing body) of the Reporting Company;
3. the individual is an important decision maker at the Reporting Company; or
4. the individual has any other form of substantial control over the Reporting Company.

There can be complexity in identifying the "25% owners" particularly in the case of Reporting Companies with complex capital structures of varying classes of stock or member or partner capital or income interests. For example, if the exercise of an option or similar interest at the present time would result in an individual holding 25% of the profit interests in an entity, the individual would be deemed to own or control 25% or more of the ownership interests in the Reporting Company even if the value of those profit interests is indeterminate or negligible at the present time. If the shares or other equity interests are held in a trust, the sole beneficiary of the trust, its trustees, and a grantor who has the right to revoke or otherwise withdraw trust assets will likely be considered the owners of such for purposes of identifying "Beneficial Owners". The CTA definition of beneficial ownership is broader than definitions applied by the Securities and Exchange Commission and by FinCEN in its customer due diligence rules applicable to financial institutions.



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Each Reporting Company must identify at least one "Company Applicant" with a maximum of two "Company Applicants." There are two categories of "Company Applicants" – (i) the "direct filer" and (ii) the individual who directs or controls the filing action. The "direct filer" is the individual who directly filed with the secretary of state or similar office the document creating the domestic Reporting Company or registering the foreign Reporting Company. The other possible Company Applicant is the individual who was primarily responsible for directing or controlling the filing of the creation or registration document.

For Reporting Companies in existence prior to January 1, 2024, the BOIRs must be filed by January 1, 2025 and for any Reporting Company formed on or after January 1, 2024, the BOIR must be filed within 30 days (90 days for entities formed or registered during 2024) of the date on which such Reporting Company was formed or in the case of a foreign Reporting Company registered in the U.S.

Except for information relating to Company Applicants, any change in the information set forth in a BOIR must be reported to FinCEN by filing an updated BOIR within 30 days after the date the change occurred. Also, if an inaccuracy in a filed BOIR is identified, a corrected BOIR must be filed with FinCEN within 30 days of the Reporting Company becoming aware of the inaccuracy or had reason to know of it.

Willful failure to timely comply with the CTA requirements, willful filing of false information or willful failure to correct inaccuracies or update information included in a BOIR may subject the Reporting Company and Company Applicants to significant civil and criminal penalties.