

Corporate Transparency Act Compliance

The federal Corporate Transparency Act (CTA) requires disclosure of information about all corporations, limited liability companies and limited partnerships (unless exempt), and personal information about their beneficial owners as well as personal information about the persons who form those entities. This requirement became effective on January 1, 2024, for all such entities unless otherwise exempt by the regulation.

Set forth below is a summary of the CTA beneficial ownership information regulation, the types of entities that are exempt, and the filing requirements:

The regulation, issued by the U.S. Treasury Department's Financial Crimes Enforcement Network (FinCEN) under the CTA, requires all entities created or registered by the filing of a document with the secretary of state or similar office of a state to disclose to FinCEN certain information about the entity (reporting company), personal information about certain beneficial owners of the reporting company (beneficial owners) and personal information about the persons that form the reporting company (company applicants). As of January 1, 2024, all corporations, limited liability companies, and limited partnerships, unless exempt, will be required to file this information. This regulation provided for the creation of a centralized database of information about reporting companies and their beneficial owners to combat money laundering, terrorist financing, and other illicit activity and to promote national security. Such information will only be available to law enforcement and the U.S. Department of the Treasury for specific purposes and will not be made publicly available upon request or otherwise.

A beneficial owner of a reporting company whose information must be reported is any individual who directly or indirectly either exercises substantial control over the reporting company or owns or controls at least 25% of the ownership interests of the reporting company. The CTA regulation requires that individuals with direct or indirect ownership or control of at least 25% of the ownership interest of a reporting company must report as beneficial owners. Regardless of ownership, an individual may exercise substantial control of a reporting company based on such individual's position with the company or ability to control or substantially influence important decisions on behalf of the company. For example, certain officers of a reporting company, such as the Chief Executive Officer, President, Chief Operating Officer, Chief Financial Officer, and General Counsel, are required to report as a beneficial owner. Individual members of the board of directors or the board of managers of a reporting company are also required to report as beneficial owners if they exercise substantial control over the reporting company. Each member of the board of directors or board of managers of a reporting company must be examined on a case-by-case basis to determine whether such individual exercises substantial control over the reporting company.

The regulation contains 23 exemptions. The exemptions generally relate to entities that are already subject to substantial governmental regulation, including banks, credit unions, insurance companies, securities reporting issuers, registered securities broker-dealers, registered investment advisors, and registered investment companies. Below are other notable exemptions:

1. Large operating companies, defined as any entity that (1) employs more than 20 full-time employees in the United States (determined on an entity basis), (2) has an operating presence at a physical office in the United States, and (3) filed a U.S. federal income tax return for the previous year showing more than \$5,000,000 in gross receipts or sales, excluding gross receipts or sales from sources outside of the United States (determined on a consolidated basis).
2. Inactive entities, defined as any entity that (1) existed on or before January 1, 2020; (2) is not engaged in active business; (3) is not owned by a foreign person, whether directly or



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indirectly, wholly or partially; (4) has not experienced any change in ownership in the preceding 12 month period; (5) has not sent or received any funds in an amount greater than \$1,000, either directly or through any financial account in which the entity or any affiliate of the entity had an interest, in the preceding 12 month period; and (6) does not otherwise hold any kind or type of assets, whether in the United States or abroad, including any ownership interest in any corporation, limited liability company, or other similar entity.

3. Subsidiaries (but not parents) of exempt entities, defined as any entity whose ownership interests are wholly controlled or wholly owned, directly or indirectly, by one or more exempt entities, except those controlled or owned by the following exempt entities: (1) money services businesses, (2) pooled investment vehicles, (3) entities assisting tax-exempt entities, and (4) inactive entities.

Existing Entities

Any reporting company created before January 1, 2024, must report the following information by January 1, 2025:

1. Reporting Company Information:

- A. Full legal name and any trade names or d/b/a names;
- B. U. S. street address of the principal place of business or primary location where business is conducted;
- C. Jurisdiction of formation or, for a foreign entity, where the entity was first registered; and
- D. Taxpayer Identification Number/Employer Identification Number or, where a foreign reporting company has not been issued a Taxpayer Identification Number, a tax identification number issued by a foreign jurisdiction.

2. Beneficial Ownership Information:

- A. Full legal name;
- B. Date of birth;
- C. Residential street address, and
- D. Unique identifying number from a passport, driver's license, or other identification document issued by a government and an image of the document from which the identifying number is obtained.

New Entities

Any entity created on or after January 1, 2024, and before January 1, 2025, must report, within 90 days of creating the entity, the information set forth above for reporting companies and beneficial owners, as well as information regarding company applicants. Any entity created on or after January 1, 2025, must report, within 30 days of creating the entity, the information set forth above for reporting companies and beneficial owners, as well as information regarding company applicants. Company applicants are defined as (1) the individual who directly files the formation documents (i.e., attorneys or paralegals) and (2) the individual primarily responsible for directing or controlling the filing if more than one individual is involved in filing the document (i.e., attorneys, clients or client representatives). Each individual who is a company applicant must report the above information required for beneficial owners except, if a company applicant forms an entity as part of such company applicant's business, the business address rather than residential address may be used. Company applicants for a reporting company are limited to two.

If any of the above information changes, other than with respect to a company applicant, the reporting company must file an updated report within 30 days of the change. This requirement creates an obligation on the reporting company and its beneficial owners to carefully monitor changes in such information.

Penalties

Willful failure to report or update required information or willfully providing or filing false information is unlawful. Willful violations can result in civil penalties of up to \$591 (adjusted for inflation) per day for any violation that has not been remedied and criminal penalties of up to \$10,000 and/or two years of prison.

Pending Litigation

In a case brought by the National Small Business Association and an individual owner of a small business, the U.S. federal district court for the Northern District of Alabama ruled that the CTA is unconstitutional because the CTA exceeded the authority of Congress. However, FinCEN will continue to enforce the CTA against all reporting companies other than the members of the plaintiff National Small Business Association as of March 1, 2024 (which, as noted in the court's decision, represents over 65,000 businesses in all 50 states) and the individual plaintiff in the case. In another recent decision, the U.S. federal district court for the District of Oregon denied the plaintiffs' motion for a preliminary injunction to enjoin enforcement of the CTA. Other cases challenging the constitutionality of the CTA are currently in process, but until those are resolved, enforcement will continue.

Actions to be Taken

January 1, 2025 – the deadline for entities created prior to January 1, 2024, to file CTA beneficial owner reports – is fast approaching. We recommend immediate action to determine which of your current entities are exempt and which are reporting companies. If you have entities that will need to report, you should begin to collect the required information and, because of its sensitive nature, maintain it in a secure place, and make any required filings.

Cozen O'Connor can assist with the determination of which of your entities are subject to the CTA and which may be exempt. We can also assist you in making the necessary filings when required. For general questions about the CTA, contact us at cta@cozen.com.