

The Corporate Transparency Act Is Coming Your Way - Be Prepared

06.07.23 01.07.26

As you may be aware, the Corporate Transparency Act (the "**CTA**") is a new federal law that requires most U.S.-based companies, including corporations, partnerships and limited liability companies, to report information regarding their "beneficial owners" to the federal government through the Financial Crimes Enforcement Network ("**FinCEN**") and a new FinCEN IT system known as the Beneficial Ownership Secure System ("**BOSS**"). The intent of the CTA and the reporting to FinCEN is to combat money laundering, tax fraud and other illegal activities.

The CTA reporting requirements will become effective on January 1, 2024, for newly formed companies (which do not otherwise qualify as exempt); provided, however, existing non-exempt companies have until January 1, 2025 to comply.

Basic Reporting Requirements

Reporting Companies. The CTA requires that any domestic entity created by, or any foreign entity registered to do business in any state (each, a "**Reporting Company**") must provide the following information to BOSS, unless an exemption (discussed below) applies:

- (a) the Reporting Company's full legal name;
- (b) any trade or D/B/A names;
- (c) current street address;
- (d) the jurisdiction of formation;
- (e) the taxpayer identification number issued by the IRS; and
- (f) information regarding Beneficial Owners and Company Applicants.

Beneficial Owners. A "**Beneficial Owner**" is an individual who directly or indirectly (a) exercises substantial control over the Reporting Company or (b) owns or controls, directly or indirectly, at least 25 percent of the ownership interests of such Reporting Company. An individual is deemed to be a Beneficial Owner by virtue of exercising substantial control over a Reporting Company where such individual: (i) serves as a senior officer; (ii) has authority to appoint or remove a senior officer or a majority of the board of directors (or

similar body); and/or (iii) otherwise directs, determines, or has substantial influence over important decisions made by the Reporting Company.

A Beneficial Owner must provide the following information:

- (a) full legal name;
- (b) date of birth;
- (c) residential street address; and
- (d) a copy of an identification document (non-expired passport, driver's license, etc.).

Beneficial Owners may be able to obtain a unique "FinCEN identifier." Thereafter, a Reporting Company would need to only provide to BOSS that Beneficial Owner's FinCEN identifier on future reports rather than the foregoing four pieces of information.

Company Applicants. A "**Company Applicant**" is: (i) the individual who files the document creating the Reporting Company (e.g., a certificate of formation) or (ii) the individual primarily responsible for directing or controlling the filing. Up to two individuals may be a "Company Applicant" for each Reporting Company filing to BOSS. Existing companies do not need to report Company Applicant information.

Required reporting information for Company Applicant(s) mirrors the information required from a Beneficial Owner, except that a Company Applicant doing such work as part of his or her employment would report the address for the employer's place of business rather than a residential street address.

Exemptions from CTA Obligations

The CTA contains many exemptions from its reporting requirements-some common and some esoteric. Some of the more common exemptions are for publicly traded companies and "large operating businesses" (i.e., businesses with 20 or more full-time employees in the United States with an operating presence in a physical office in the United States and more than \$5 million in annual gross revenue in the previous year), certain investment vehicles, tax-exempt entities (e.g., 501(c) organizations), accounting firms, banks and credit unions.

This list is only an example of the CTA's enumerated exemptions. If you have questions about whether one of the exemptions under the CTA applies to your Reporting Company, please contact a member of the Foster Garvey CTA Team (described below).

Timelines, Duty to Update, Penalties

For Reporting Companies formed on or after January 1, 2024, beneficial owner reports must be filed with BOSS within 30 days of formation of the Reporting Company.

For Reporting Companies formed before January 1, 2024, beneficial owner reports must be filed with BOSS by no later than January 1, 2025. In other words, existing entities (if not exempt) have one year to comply

with the CTA's reporting obligations.

ALERT: Reporting Companies have an ongoing duty to provide updated beneficial owner reports within 30 days if there is a change to previously reported information (e.g., a Beneficial Owner moves and has a new street address) or if it becomes aware of a previous report that contained inaccurate information. This duty to update is enforced by the CTA's broad dictate that "[i]t shall be unlawful for any person to willfully provide, or attempt to provide, false or fraudulent beneficial ownership information . . . or to willfully fail to report complete or updated beneficial ownership information to FinCEN"

At a minimum, therefore, cautious actors should assume that the duty to update applies not only to the Reporting Companies themselves but also to Beneficial Owners. Civil and criminal penalties for willful violations of the CTA include a fine of up to \$500 per day for each day a violation continues (up to \$10,000 in total) and up to two years of imprisonment, with increased civil and criminal penalties available for a knowing violation of the CTA reporting requirements.

Access to BOSS Database

Many governmental agencies and financial institutions will have access to the BOSS Database in connection with criminal investigations and regulatory compliance. Access to and the uncertain security of the BOSS database raises concerns, including, among other things, security breaches, unauthorized disclosures, and potential discrepancies among related filings by a Reporting Company (e.g., tax returns).

Suggested Next Steps

Business entities will undoubtedly be impacted by the CTA and its new reporting requirements. To prepare, we recommend that businesses: (i) familiarize themselves with the reporting obligations of the CTA, including any exemptions that may apply; (ii) establish internal protocols and procedures for collecting beneficial ownership information for existing and future entities and for collecting and reporting updates to such information; and (iii) reach out to counsel and/or members of the Foster Garvey CTA Team to address any questions or concerns.

The CTA appears to be here to stay. Preparation and compliance monitoring by business entities is mandatory. The risks and costs of noncompliance are too great.

* * *

Our firm has assembled a team of lawyers to address CTA compliance and assist clients in their journey through the maze created by lawmakers under the CTA. Foster Garvey's CTA Team is comprised of [Larry Brant](#) (Tax), [Hillary Hughes](#) (Business), [Bryan Helfer](#) (Real Estate), [Dan Youngblut](#) (Finance/Corporate),

[Aaron Frishman](#) (Trusts & Estates) and [Francesca Garcia](#) (Corporate Paralegal). We are monitoring the federal government's ongoing guidance regarding the interpretation and/or implementation of the CTA and BOSS, and are developing guidelines and best practices for CTA compliance.

Posted in [Federal Law](#), [Legislation](#), [Tax Laws](#)

Tagged as [Beneficial Owners](#), [Beneficial Ownership Secure System \(BOSS\)](#), [Corporate Transparency Act \(CTA\)](#), [Financial Crimes Enforcement Network \(FinCEN\)](#), [Reporting Companies](#)

Authored by

[Larry J. Brant](#)

[Principal|Portland](#)

[503.553.3114 larry.brant@foster.com](#)