

Corporate Transparency Act — Beneficial Ownership Information Reporting Requirement

The Corporate Transparency Act (“CTA”) was enacted into law as part of the National Defense Act for Fiscal Year 2021. The CTA requires the disclosure of the beneficial ownership information (BOI) of certain entities from people who own or control a company.

It is anticipated that 32.6 million businesses will be required to comply with this reporting requirement. The intent of the BOI reporting requirement is to help US law enforcement combat money laundering, the financing of terrorism and other illicit activity.

The CTA is not a part of the tax code. Instead, it is a part of the Bank Secrecy Act, a set of federal laws that require record-keeping and report filing on certain types of financial transactions. Under the CTA, BOI reports will not be filed with the IRS, but with the Financial Crimes Enforcement Network (FinCEN), another agency of the Department of Treasury.

Under the current structure, there is a risk that advising on and/or preparing these reports could be considered the unauthorized practice of law by CPAs. The assessment and application of many of the requirements set forth in the regulations, including but not limited to the determination of beneficial ownership interest, necessitate the need for legal guidance and direction. As a result CS&L CPAs will not advise on or assist with the direct preparation of the BOI reporting. We strongly encourage you reach out to your legal representative for assistance as soon as possible in complying with these filings.

In an effort to make our clients aware of the filing requirement, we are providing you with some general information regarding the new reporting rules as well as initial steps to take to address the implications of the CTA to your organization.

What entities are required to comply with the CTA’s BOI reporting requirement?

Entities organized both in the U.S. and outside the U.S. may be subject to the CTA’s reporting requirements. Domestic companies required to report include corporations, limited liability companies (LLCs) or any similar entity created by the filing of a document with a Secretary of State or any similar office under the law of a state or Indian tribe.

Domestic entities that are not created by the filing of a document with a Secretary of State or similar office are not required to report under the CTA. Since the definition of a domestic entity under the CTA is extremely broad, additional entity types could be subject to CTA reporting requirements based on individual state law formation practices.

Foreign companies required to report under the CTA include corporations, LLCs or any similar entity that is formed under the law of a foreign country and registered to do business in any state or tribal jurisdiction by filing a document with a Secretary of State or any similar office.

Are there any exemptions from the filing requirements?

There are 23 categories of exemptions. Included in the exemptions list are publicly traded companies, banks and credit unions, securities brokers/dealers, public accounting firms, tax-exempt entities and certain inactive entities, among others. Please note these are not blanket exemptions and many of these entities are already heavily regulated by the government and thus already disclose their BOI to a government authority.

In addition, certain “large operating entities” are exempt from filing. To qualify for this exemption, the company must meet **all** of the following requirements:

- a) Employ more than 20 people in the U.S.;
- b) Have reported gross revenue (or sales) of over \$5M on the prior year tax return; **and**
- c) Be physically present in the U.S.

Who is a beneficial owner?

Any individual who, directly or indirectly, either:

- Exercises “substantial control” over a reporting company, or
- Owns or controls at least 25 percent of the ownership interests of a reporting company

An individual has substantial control of a reporting company if the individual

- serves as a senior officer of the company;
- has authority over the appointment or removal of any senior officer or a majority of the board; or
- directs, determines, or has substantial influence over important decisions made by the Reporting Company.

Thus, senior officers and other individuals with control over the company are beneficial owners under the CTA, even if they have no equity interest in the company. The detailed CTA regulations define the terms “substantial control” and “ownership interest” further. See <https://www.govinfo.gov/content/pkg/FR-2022-09-30/pdf/2022-21020.pdf> for more information.

When must companies file?

There are different filing timeframes depending on when an entity is registered/formed or if there is a change to the beneficial owner’s information.

- New entities (created/registered after 12/31/23) — must file within 90 days
- Existing entities (created/registered before 1/1/24) — must file by 1/1/25
- New entities (created/registered after 12/31/24) — must file within 30 days
- Reporting companies that have changes to previously reported information or discover inaccuracies in previously filed reports — must file within 30 days

What sort of information is required to be reported?

Companies must report the following information: full name of the reporting company, any trade name or doing business as (DBA) name, business address, state or Tribal jurisdiction of formation, and an IRS taxpayer identification number (TIN).

Additionally, information on the beneficial owners of the entity and for newly created entities, the company applicants of the entity is required. This information includes — name, birthdate, home address, and unique identifying number and issuing jurisdiction from an acceptable identification document (e.g., a driver’s license or passport) and an image of such document.

Understand your reporting requirement.

Penalties for willfully not complying with the BOI reporting requirement can result in criminal and civil penalties of \$500 per day and up to \$10,000 with up to two years of jail time.

Please visit <https://www.fincen.gov/boi> for additional information.

The American Institute of Certified Public Accountants and other organizations have requested a delay in reporting requirements. We will continue to monitor further developments, including whether assisting with the reporting is considered unauthorized practice of law in the state of Florida. If you are in need of a referral for legal representation to assist you with your reporting requirement, please call our office. As always, planning ahead can help you comply and understand your filing obligations.

Sincerely,

CHRISTOPHER, SMITH, LEONARD & STANELL, P.A.