



The Corporate Transparency Act

FAQs

October 2022



What is the Corporate Transparency Act?

The Corporate Transparency Act (CTA) is intended to give law enforcement and other government agencies more tools to fight corruption, terrorism, money laundering, the flow of drug money, and to protect national security. The CTA does this by giving the necessary government agencies access to beneficial ownership information of corporations, limited liability companies, and similar entities. The beneficial ownership information will be collected and accessed through the Financial Crimes Enforcement Network (FinCEN).

What is FinCEN?

FinCEN is the acronym for the Financial Crimes Enforcement Network. It is a bureau within the U.S. Treasury Department that enforces anti-corruption and anti-money laundering laws. It also plays a role in safeguarding the financial system and national security.

Who is a beneficial owner?

A beneficial owner is an individual who, directly or indirectly, exercises substantial control over the entity or owns or controls not less than 25 percent of the ownership interests of the entity. There are a few exceptions, such as the minor children of a beneficial owner or a person that is solely an employee of the reporting company.

Who is a company applicant?

The final FinCEN rule defines “company applicant” as an individual who either (i) directly files the document to create a domestic reporting company or registers a foreign reporting company; and (ii) the individual who is primarily responsible for directing or controlling such filing if more than one individual is involved in the process. At most, a reporting company will have to provide information on two company applicants.

When does the CTA take effect?

The reporting requirements will take effect on January 1, 2024.

What companies have to report beneficial ownership information under CTA?

The CTA creates the concept of a “reporting company.” The term reporting company means a corporation, limited liability company, or other similar entity that is either created by the filing of a document with a secretary of state, or a similar office of a state or Indian tribe, or is formed under the law of a foreign country and registered to do business in the United States by the filing of a document with a secretary of state or a similar office of a state or Indian tribe. All reporting companies must provide beneficial ownership information to FinCEN.

Are any companies exempt from beneficial ownership reporting requirements?

Yes, there are a multitude of entities that are excluded from the term reporting company and are exempt from the reporting requirements. The companies exempted from the reporting requirements tend to have one thing in common. They are generally already subject to strict federal or state regulation. For example, financial institutions have to be registered and are subject to government oversight. The same applies to companies registered with the Securities and Exchange Commission, state insurance regulators, and companies that operate in regulated industries, such as utilities. In these cases, the company beneficial owner information would already have been provided to the government as part of the regulatory process. Subsidiaries owned or controlled by an exempt entity and inactive entities are also exempt.

One other important exemption applies for large operating companies. A large operating company is any entity that employs more than 20 full-time employees in the U.S., has an operating presence at a physical address in the U.S. and filed a federal income tax return for the previous year demonstrating more than \$5 million in gross receipts or sales. Note that the large operating company exemption is not available to any entity for at least one year after formation because such an entity cannot satisfy the tax return requirement

How will reporting companies submit the required information to FinCEN?

The final rule issued by FinCEN indicates that submission forms and instructions will be forthcoming before the effective date. It is expected that companies at some point will report the information electronically.

How soon does a company have to submit a report to comply with the new law?

The reporting requirements begin on January 1, 2024. Any reporting company in existence before that date will have until January 1, 2025 to submit its initial report to FinCEN.

Reporting companies formed or initially registered after January 1, 2024 must submit an initial report to FinCEN within 30 calendar days from the earlier date on which the company receives actual notice of the formation, or registration, or the date on which the secretary of state or similar office first provides public notice, such as through the online registry.

What information must a reporting company provide about itself?

The following information must be provided for each beneficial owner and company applicant: (i) full legal name; (ii) date of birth; (iii) current residential or business street address; and (iv) a unique identifying number from an acceptable identification document. In the alternative, a FinCEN identification number can be provided. In the case of a company applicant engaged in the business of filing company formation documents, the business address of the company applicant is acceptable.

What information must a reporting company provide for each beneficial owner?

The following information must be provided for each beneficial owner: (i) full legal name; (ii) date of birth; (iii) current residential or business street address; and (iv) a unique identifying number from an acceptable identification document. In addition, the reporting

company must provide a legible image of the identification document corresponding to the unique identifying number.

What information must a reporting company provide for each company applicant?

For reporting companies formed or registered after January 1, 2024 the rules for company applicant information in the initial report are nearly identical to the requirements for beneficial owners. The following information must be provided for each company: (i) full legal name; (ii) date of birth; (iii) current residential address or, if the company applicant forms or registers an entity in the course of the company applicant's business, a street address of the business; and (iv) a unique identifying number from an acceptable identification document. In addition, the reporting company must provide a legible image of the identification document corresponding to the unique identifying number. As an alternative, the reporting company can provide a FinCEN identification for the company applicant.

Reporting companies already in existence on January 1, 2024 do not need to include company applicant information in their initial reports.

What is a FinCEN identification number?

Upon request, FinCEN will issue a unique identifying number to an individual who has provided all the required beneficial owner information. Thereafter, a reporting company or applicant can provide the unique identifying number to FinCEN instead of providing all the personal information each time a new entity is formed. A reporting company can also apply for its own FinCEN identifier.

What is an acceptable identification document for purposes of the statute?

Acceptable identification documents include: (i) a non-expired U.S. passport; (ii) a non-expired identification document issued by a state, local government, or Indian tribe; (iii) a non-expired driver's license issued by a state; or (iv) if the individual lacks all of the foregoing documents, a non-expired foreign passport.

What if beneficial ownership information changes after submission to FinCEN?

If any of the beneficial owner information previously reported to FinCEN changes, the reporting company will need to submit an update report. The deadline for submitting the update report is 30 calendar days after beneficial ownership information changes.

What if company applicant information changes after submission to FinCEN?

Under the final FinCEN rule, company applicant information does not need to be updated. However, correct company applicant information must be provided in the initial report.

What if I mistakenly provide incorrect information to FinCEN?

A person who provides incorrect information but is not attempting to evade the reporting requirements must file a report to correct the information within 30 calendar days.

Who will have access to the beneficial owner information?

With limited exceptions, the information may only be disclosed to government law enforcement, prosecutors, the courts, and national security agencies. Financial institutions may have access to the information for due diligence purposes with consent of the reporting company. In some cases, the information may be disclosed if requested by a federal agency to assist the law enforcement, courts, prosecutors, or judges of a foreign country. More specific information on the parties entitled to the information will be established in the rules promulgated by the Treasury Department.

How long does FinCEN retain the beneficial owner information?

FinCEN is required to maintain the information until five years after the reporting company terminates or is otherwise dissolved.

Is the beneficial owner information available to the public?

No. Beneficial ownership information provided to FinCEN is confidential and may not be publicly disclosed by any government representative or the officers and employees of financial institutions that have access to the data.

Are there any penalties for non-compliance with the CTA reporting requirements?

Yes, failure to provide complete, accurate, and timely information, or willfully providing false or fraudulent beneficial owner information, can result in harsh civil and criminal penalties. Civil penalties may include a fine of \$500 for each day the violation continues. Criminal violations may be punished by up to two years imprisonment and a \$10,000 fine.

For more information, please contact your CSC sales or service representative, or send us an email at corpleads@cscglobal.com.