



The Corporation Transparency Act—What it Means for Companies

On January 1, 2021, the U.S. House and Senate enacted H.R. 6395, the National Defense Authorization Act, by voting to override the president’s veto. Embedded in the 1,480-page Act was the Corporate Transparency Act (CTA), which includes beneficial ownership reporting requirements for new and existing companies.

The CTA left much of the beneficial owner reporting framework and interpretation to the Financial Crimes Enforcement Network (FinCEN). After 18 months of the rulemaking process, FinCEN issued the final regulation on September 30, 2022. The reporting requirements do not take effect until January 1, 2024, but this will be a significant change to the company formation process. Therefore, it is important to start planning now.

The purpose of this article is to provide a high-level overview of the final rules for reporting beneficial ownership information in compliance with the CTA, identify who must comply with the new law, and the timetable for compliance. It’s important to note that the final rule did not eliminate all ambiguities and FinCEN may need to issue further clarifications before the effective date of the reporting requirements.

Overview

At the request of law enforcement and other stakeholders, in 2006, Congress began to introduce bills intended to provide more transparency into company ownership. It took more than a decade, but Congress was finally able to pass the CTA, which requires companies to report beneficial ownership information directly to FinCEN, a bureau within the Treasury Department.

Reporting companies and the scope of the CTA reporting requirements

The new CTA requirements apply to corporations, limited liability companies, and other entities that are created by filing a document with the secretary of state or equivalent office. Foreign (non-U.S.) companies are also reporting companies if they’re registered to do business in any state or tribal jurisdiction, or fall within the CTA’s definition of “reporting company.” The CTA also applies to a “company applicant” (discussed below). A company applicant must report the same information as beneficial owners.

Companies exempt from reporting requirements

The CTA exempts numerous types of companies from the reporting requirements. The exempt companies tend to have one thing in common—most are already subject to strict federal or state regulation. For example, financial institutions have to be registered with various government regulators and are subject to 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 regulators would already have access to the company beneficial owner information.

One other important exemption applies to 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.

Other exemptions apply to any entity owned or controlled by an exempt entity, government entities and inactive entities, if they satisfy certain criteria. Due to the nature of the exemptions, most reporting companies will be small businesses.

Beneficial owner

A beneficial owner is any person who, directly or indirectly, exercises substantial control over a reporting company or owns at least 25 percent of the ownership interests in the reporting company. The final rule provides examples of what FinCEN considers substantial control, which includes serving as a senior officer of the reporting company. However, the criteria used to determine substantial control are not limited to those expressly stated in the rule. Likewise, the rule explains what constitutes an ownership interest and how to calculate the total percentage of ownership interest owned or controlled by an individual.

Not every owner is a beneficial owner, even if they exercise substantial control or own 25% or more of the ownership interest in a reporting company. There are narrow exceptions that apply in some cases to minors, nominees, employees, creditors, and those with a right of inheritance.

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 register 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.

Initial reporting requirements

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.

Reporting companies in existence or registered before January 1, 2024 will have until January 1, 2025 to file the initial report with FinCEN. Existing reporting companies will have to file the same information as for new companies, except that they will not need to provide company applicant information.

A company that was not previously required to report due to an exemption may cease to meet the criteria for exemption. In such cases, the formerly exempt company must file an initial report with FinCEN within 30 calendar days after the exemption no longer applies.



The initial report to FinCEN must include the following information about the reporting company: (i) the full legal name of the reporting company; (ii) any trade name or “doing business as” (DBA) name of the reporting company; (iii) the complete current address of the reporting company consisting of the physical address of its principal place of business or, if the reporting company does not have its principal place of business in the U.S., the street address of the primary location where the reporting company conducts business; (iv) the jurisdiction of formation or initial registration; and (v) the taxpayer identification number (TIN). Special rules may apply to a foreign company that does not have a TIN. In addition to the foregoing information, the reporting company must also provide information about every individual that is a beneficial owner or company applicant.

Required beneficial ownership and company applicant information

A reporting company must provide the following information to FinCEN for each beneficial owner and company applicant: (i) full legal name; (ii) date of birth; (iii) current, as of the date of report, residential or business street address; (iv) a unique identifying number from an acceptable identification document that is specified in the CTA; and (v) a legible image of the identification document that corresponds to the number provided. 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. In lieu of the foregoing information, a reporting company can provide the FinCEN identifier number for the beneficial owner or company applicant.

FinCEN identifier

A reporting company or an individual may apply for a FinCEN identifier. An individual who applies for a FinCEN identifier must provide the same information required for a beneficial owner or company applicant under the CTA. The holder of a FinCEN identifier can provide that number in lieu of the personal information required for a beneficial owner or company applicant. However, the holder of a FinCEN identifier has an ongoing obligation to update FinCEN within 30 calendar days if any information provided to obtain the FinCEN identifier changes.

Update reports

If any information reported to FinCEN changes at a later date, the reporting company will need to submit an update with the added or changed information within 30 calendar days of the date when the information changed. If a reporting company later meets the criteria for an exemption after filing its initial report, FinCEN will deem that a change in the information and the company must submit an update report within the 30-day period. There is one exception to reporting changes. A reporting company does not need to submit an update report for changes to company applicant information.

Confidentiality of beneficial ownership information

Beneficial ownership and company applicant information collected by FinCEN under the CTA may not be disclosed by any government officer or financial institution given access to it. FinCEN may only disclose beneficial ownership information in response to requests from 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. Unauthorized disclosure of beneficial ownership information is a crime punishable by up to five years imprisonment and a \$250,000 fine.

Conclusion

The effective date of the CTA is now set and the clock is ticking for compliance. The final rule issued by FinCEN still has some ambiguities that will be clarified over time. Nevertheless, the time to begin planning for compliance is now. Expect to hear much more from CSC as the effective date approaches. In the meantime, for more information, please contact your CSC sales or service representative, or send us an email at corpleads@cscglobal.com.