

January 2023

CORPORATE TRANSPARENCY ACT

This is an extremely important notice regarding new federal reporting requirements for corporations, limited liability companies (“LLCs”), and other entities registered in the United States. The Department of the Treasury’s Financial Crimes Enforcement Network (“FinCEN”) has issued final rules implementing the Corporate Transparency Act (“CTA”). **Your failure to comply with the CTA may result in a felony conviction.** Please read this notice carefully and ask your primary contact at Manley & Brautigam P.C. if you have any questions about the CTA.

Does this notice affect you?

Probably. Almost all LLCs, corporations, and other entities created by filing paperwork with the state will need to comply with CTA reporting requirements.

What do you have to do?

LLCs, corporations, and other entities registered in the United States must *file and regularly amend* reports with FinCEN. These reports must provide identifying information on the entity, its owners, and the people who filed the entity’s formation paperwork.

Who counts as an “owner”?

Under the CTA, an “owner” is anyone who, directly or indirectly, has substantial control over an entity or owns or controls 25% or more of the entity’s ownership interest. People who have substantial control include, but are not limited to:

- All senior officers of the entity.
- Persons who exert authority over the appointment or removal of any senior officer or a majority of the board of directors (or similar body).
- Persons who exert substantial influence over important business decisions.
- A corporation’s directors and an LLC’s managers.
- Anyone who holds veto or consent rights over key decisions.
- For trusts that hold ownership interests, trustees, trust protectors, certain beneficiaries and grantors, and anyone else who can dispose of trust assets.
- Anyone who controls an entity through financing or contractual arrangements.

Other people may need to be listed in reports to FinCEN. Ultimately, whether a person counts as an owner is a question of fact and circumstance.

When do I need to file the first report?

Entities formed before January 1, 2024, must file a report by no later than January 1, 2025. Entities formed on or after January 1, 2024, must file a report within 30 days of formation.

Because we expect many requests for assistance, we will notify you of a deadline beyond which we will not accept requests to prepare and file initial reports on a client's behalf.

Do I need to file updated reports if ownership information changes?

Yes. If identifying information changes for your entity or an owner, then the entity must file an updated report within 30 days. For example, if an owner moves to a different address, the entity has 30 days to file an updated report.

What penalties do I face if I do not comply with the CTA?

Failure to file accurate reports carries civil penalties of up to \$500 per day (up to a total of \$10,000) and *felony* criminal penalties of up to 2 years in prison.

Are there any exemptions?

Yes, 23 types of entities are exempt from reporting. These exemptions mostly apply to entities that already have significant reporting requirements (e.g., banks). The following are notable exemptions to the CTA:

- Large operating companies with more than 20 full-time employees, more than \$5,000,000 in gross annual receipts, and a physical operating presence in the United States.
- Tax exempt entities.
- Public accounting firms.
- Insurance producers.

Additionally, 5 types of people are exempt from reporting:

- Minor children (if their parents' information is provided).
- Nominees, intermediaries, custodians, or agents acting on another's behalf.
- Employees whose control and compensation derive solely from employment.
- Anyone whose only interest in an entity is a right of inheritance.
- Creditors who do not wield substantial control.

These exemptions can be quite complicated. If you think an exemption may apply to your entity or to an owner, please contact our office for assistance.

Why are these rules being implemented?

Congress created the CTA to curtail money laundering and organized crime by making shell companies less effective at keeping ownership interests secret. Unfortunately, this expansive law will create more administrative costs and complexity for legally compliant business owners.

If you have questions or concerns, please contact your primary attorney at Manley & Brautigam P.C.

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