

September 2023

CORPORATE TRANSPARENCY ACT COMPLIANCE

On January 1, 2024, the federal Corporate Transparency Act (“CTA”) is scheduled to take effect. Under this new law, most business entities will be required to report information about the people who control and create them to the federal government. Because failure to comply with the CTA carries both civil and felony criminal penalties, it is critical that business owners understand how to comply with this new law.

What is the CTA?

The CTA is an anti-money laundering law that was passed in 2020 with bipartisan support. It is intended to make it harder for criminals to hide and transfer money by exchanging business interests while hiding behind the anonymity that some state laws provide.

Who is subject to the CTA?

Subject to several exceptions, business entities created by filing with a state office must file reports with the Financial Crimes Enforcement Network (“FinCEN”). These reports must identify (1) the “reporting company,” (2) the company’s “beneficial owners,” and (3) for companies formed on or after January 1, 2024, the “applicants” who file the company’s formation documents.

What is a “reporting company”?

Unless an exception applies, a reporting company is any entity created by a filing with the State of Alaska or another state. Exceptions apply to some heavily regulated businesses, including certain nonprofits, CPA firms, insurance producers, securities and commodities dealers, etc. There are also exceptions for wholly owned subsidiaries of exempt companies and for large operating businesses (*i.e.*, businesses with more than twenty full-time employees and more than \$5 million in gross receipts for the prior tax year). Although this list is not exhaustive, the exceptions are narrow, and determining whether an exception applies to a business will be difficult.

What is a “beneficial owner”?

Under the CTA, a “beneficial owner” is any natural person who directly or indirectly exercises substantial control over a reporting company, or who owns or controls 25% or more of the reporting company’s ownership interests. “Substantial control” ultimately

depends on facts and circumstances. People who have substantial control include, but are not limited to, CEOs, CFOs, COOs, general counsels, LLC managers, trustees of trusts that own business interests, and any person who can functionally control a company. This list is not exhaustive. It is important to note that job title does not matter; a person's authority (whether formal or informal) is determinative. Some exceptions apply for employees, minors, agents, creditors, and others, but there are also cases where a creditor may be deemed to have substantial control over a company.

What must be reported?

A reporting company must share its full legal name, all trade names and "doing business as" names, its street address, its state of formation, and its tax identification number. A reporting company must also report every beneficial owner's full legal name, date of birth, *current* residential street address (not a P.O. box), and a unique identifying number from a government document such as a current passport or driver's license. A photocopy of the identifying document is also required. Similar information is required from anyone who forms a reporting company on or after January 1, 2024.

When do you need to report?

Beneficial ownership information ("BOI") reports must be filed **within thirty (30) days** of a reporting company's formation or any change in the identifying information. For example, if the reporting company or one of its beneficial owners moves to a new address or changes its name, a new BOI report must be filed. If a company exists before January 1, 2024, the company will have until January 1, 2025, to file an initial BOI report.

What can you do now?

Although the CTA's effective date is still months away, it is very important to comply with its requirements once it takes effect in 2024. Failure to do so can result in civil penalties of up to \$500 per day per violation, and criminal penalties of up to \$10,000 and two years in prison. As a result, we strongly encourage you to collect the information necessary to complete a BOI report sooner rather than later. Although it is not yet possible to pre-file a report, obtaining the necessary information now will make it easier to identify and answer any questions you may have about whether your company is a reporting company, whether a person is a "beneficial owner" of your company, and whether any exceptions apply that will streamline your eventual reporting obligations.

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

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