



Corporate Transparency Act Reminder:

Deadline for filing is January 1, 2025

(for companies formed prior to January 1, 2024)

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The Corporate Transparency Act (“CTA”), a new federal law affecting many new and existing companies, went into effect on January 1, 2024. The CTA requires certain companies (“Reporting Companies”) to report beneficial ownership and other information to the US Treasury Department’s Financial Crimes Enforcement Network (“FinCEN”) through an e-filing system. The law also includes ongoing reporting requirements and imposes civil and criminal penalties for non-compliance. More information about the CTA and its requirements is set forth in more detail below.

The CTA’s reporting requirements take effect for a Reporting Company depending on when such Reporting Company was formed. For Reporting Companies formed before January 1, 2024, the CTA requires that such companies comply with these reporting requirements on or before January 1, 2025. The process of determining whether a company is a “Reporting Company,” and if so, ascertaining the company’s “Beneficial Owner(s)” (as defined below) and obtaining the information about such Beneficial Owner(s) that must be included in the filing, may require substantial lead time. We strongly recommend that all companies (which includes corporations, LLCs, LPs and LLPs) formed before January 1, 2024 start this process as soon as possible to avoid potential last minute filing issues. Your M&H attorneys are available to answer your questions about the CTA and the filing process.

The Corporate Transparency Act

The CTA requires certain US companies, as well as foreign companies registered to do business in any US state or tribal jurisdiction, to report Beneficial Ownership Information (“BOI”) and other information to FinCEN. The

CTA was enacted to combat financial crimes such as money laundering and tax fraud by increasing transparency in business ownership. [The complete text of the CTA and other reference materials can be found here.](#)

Although the CTA is now effective, regulations and advisory interpretations of the CTA are still being developed and issued, and several aspects of the law remain unclear. This Client Alert summarizes the CTA’s requirements as of August 1, 2024 - please contact your M&H attorney for updated information.

Compliance Timing

Reporting Companies will have to report BOI depending on when the company was formed:

- ◆ As indicated above, Reporting Companies formed before January 1, 2024, have until January 1, 2025 to comply with the CTA’s reporting obligations.
- ◆ Reporting Companies formed on or after January 1, 2024, and before January 1, 2025, have 90 calendar days from their date of formation to file their initial report and comply with the CTA.
- ◆ Reporting Companies formed on or after January 1, 2025, will have 30 calendar days from their date of formation to comply with the CTA.

Reporting Companies

All domestic companies that are established through the submission of a document to a Secretary of State or comparable office are impacted (which would include most corporations, LLCs, LLPs and LPs). A trust created by filing a document with the Secretary of State, or similar office, is considered a Reporting Company and will need to submit a

report. Most trusts do not require this filing and thus generally will not fall under the definition of a Reporting Company. A trust that is a Beneficial Owner of a Reporting Company may need to provide BOI to the Reporting Company to include in the Reporting Company's CTA report.

Additionally, all foreign companies that are registered to do business in any US state or tribal jurisdiction are impacted. Reporting obligations apply to these entities unless the entity is exempt.

The CTA provides 23 categories of exempt entities. The primary exemptions are the following:

- ◆ Operating companies that have (i) at least 20 full-time employees in the US, (ii) an operating presence at a physical office in the US, and (iii) filed a tax return the previous year indicating more than \$5 million in US-sourced gross receipts or sales.
- ◆ Issuers registered with the US Securities Exchange Commission.
- ◆ Banks, bank holding companies, and credit unions.
- ◆ Registered investment companies, broker-dealers, and registered venture capital fund advisors.
- ◆ Insurance companies or state-licensed insurance producers.
- ◆ Accounting firms.
- ◆ Tax-exempt entities or certain entities that assist tax-exempt entities. [Note that such entities should monitor their tax-exempt status. If a tax-exempt entity loses its tax-exempt status, such entity must report BOI within 180 days.]
- ◆ Certain pooled investment vehicles.
- ◆ Inactive entities that (i) were in existence on or before January 1, 2020, (ii) are not engaged in active business, (iii) are not owned, directly or indirectly, by a foreign person, (iv) have not received or sent more than \$1,000 or experienced a change in ownership in the immediately preceding 12 months, and (v) do not hold any assets, including any ownership interests.

Note that even if a company itself is exempt from the CTA's reporting requirements, it may own or substantially control one or more non-exempt entities that are obligated to report. [The Small Entity Compliance Guide](#) published by FinCEN includes a checklist that may be helpful in determining whether a company is exempt.

An exempt company does not have to file a CTA report if it has always been exempt from the BOI reporting requirements. However, if a company has previously filed a report and later becomes exempt, it should file an updated report indicating that it is newly exempt. This updated report will only require a newly exempt entity to (1) identify itself, and (2) check a box confirming its newly exempt status⁽¹⁾.

Information Required to be Reported

Below is a summary of what the CTA requires a Reporting Company to report to FinCEN:

Company Information:

- ◆ The company's legal name, all trade names, and d/b/a names;
- ◆ Street address of the company's principal place of business (which may not be a P.O. box or the address of a third party);
- ◆ The jurisdiction in which the entity was formed;
- ◆ Tax ID number; and
- ◆ "Beneficial owner" information.

Beneficial Owner Information (for each Beneficial Owner):

- ◆ Full legal name;
- ◆ Date of birth;
- ◆ Current residential address (which may not be a P.O. box);
- ◆ An ID number, which should be from an acceptable non-expired ID document such as (1) a US passport, (2) a US driver's license, or (3) an ID issued by a US state, local, or tribal agency. Passports issued by foreign governments are only acceptable if an individual does not have one of the three listed forms of ID; and
- ◆ An image of such ID.

⁽¹⁾ 31 C.F.R. 1010.380(a)(2)(ii) and 31 C.F.R. 1010.380(b)(3)(ii)

Applicant Information:

- ◆ Companies formed on or after January 1, 2024, must report the same beneficial ownership information for “company applicants” as well. “Company applicants” are individuals who directly file the document that creates or registers the Reporting Company with a Secretary of State or similar office. If more than one individual was involved, the individual primarily responsible for directing the filing will also be considered a company applicant.

[Note: companies formed prior to January 1, 2024 do not need to report company applicant information.]

Changes to Reported Information:

- ◆ Reporting Companies are required to update their filings with FinCEN if any required information changes or if any mistakes are identified in previous reports within 30 days of the change or discovery of inaccuracy.
- ◆ If an inaccurate report is submitted, the CTA provides Reporting Companies with a safe harbor from penalties if a report correcting the inaccuracy is filed within 90 days of the deadline for the initial report.

Certification:

- ◆ Under the CTA, a Reporting Company is required to certify that the reported information is “true, correct, and complete.”

Who is a Beneficial Owner?

The main purpose of the CTA is to identify *individuals* who ultimately own or control Reporting Companies. The CTA’s identification process essentially requires a “look through” of all owners of Reporting Companies that are entities themselves, such as LLCs.

The CTA defines a Beneficial Owner as an individual who:

- ◆ Either directly or indirectly, exercises “substantial control” over the Reporting Company; or
- ◆ Owns or controls at least 25% of the “ownership interests” of the Reporting Company.

The CTA further provides that “substantial control” is exercised over a Reporting Company if an individual:

- ◆ Serves as a senior officer (except for a corporate secretary or treasurer);
- ◆ Has authority over the appointment or removal of any senior officer or a majority of the board of directors (or similar body);
- ◆ Directs, determines, or has substantial influence over important decisions made by the Reporting Company; or
- ◆ Has any form of substantial control over the Reporting Company, including a trustee of a trust.

“Ownership interests” are defined in the CTA to include all forms of equity interests in the Reporting Company as well as capital or profit interests, convertible instruments, warrants or rights or other options or privileges to acquire equity, capital or other interests in such Reporting Company. In addition:

- ◆ Any debt instrument is also deemed to be an “ownership interest” to the extent it allows the holder to exercise the same rights as one of the specified equity or other interests in the definition of “ownership interests;”
- ◆ Outstanding interests (such as options or profits) are deemed to be exercised for purposes of the 25% ownership test, and if there is more than one class of equity interests outstanding, the 25% threshold is determined as a percentage of all outstanding interests; and
- ◆ An individual may own or control an ownership interest of a Reporting Company through a trust, or other exempt entity, and therefore has to provide BOI to such Reporting Company for inclusion in the Reporting Company’s BOI report.

The CTA excludes the following from the definition of a beneficial owner:

- ◆ Minor children (the child’s parent or guardian information should be reported instead);
- ◆ An individual acting as a nominee, intermediary, custodian, or agent on behalf of another individual (but such underlying individual will still be subject to the BOI requirements);
- ◆ An individual acting solely as an employee (as long as such individual is not a senior officer of the company);
- ◆ An individual whose interest in an entity is only through a

right of inheritance; and

- ◆ Creditors of the Reporting Company.

Penalties for Non-Compliance

The CTA contains significant penalties for non-compliance. Any person that fails to file a report required by the CTA or update such report, or any person who willfully provides false information in the report may face civil penalties of up to \$500 per day, with a cap of \$10,000, and such person may face imprisonment for up to two years. An individual may be held responsible for failure to file a report if such individual (1) caused the failure to report, or (2) was a senior officer at the company at the time of failure⁽²⁾.

FinCEN Identifiers

In the interest of convenience, FinCEN allows individuals to obtain a unique identifying number from FinCEN which can then be used for future CTA filings rather than repeating the beneficial owner information. Individuals can [obtain a FinCEN identifier here](#) by providing their BOI – see the information in “How to File a Report and Obtain a FinCEN ID” below. A Reporting Company will be able to get a FinCEN identifier only at or after the time the Reporting Company files its initial report. Note that if a Reporting Company does not request a FinCEN identifier when submitting its initial report, it will have to file another updated report to obtain one. FinCEN identifier holders must report any changes to their BOI by filing an updated report no later than 30 days after the date on which the change occurred. If an inaccuracy is identified in reported BOI, it must be corrected no later than 30 days after an individual becomes aware of the inaccuracy or has reason to know of it. If an individual provides a FinCEN identifier to a Reporting Company, the burden to update the information provided to FinCEN shifts to the individual⁽³⁾.

Third Party Websites

Reporting Companies can utilize third-party services to file BOI reports. Various established as well as new service providers are offering to manage compliance with the CTA, including filing any updated reports. If a Reporting Company utilizes a third-party provider to file a BOI report, it should acquire a transcript of the report and confirmation of submission from the service provider.

Privacy

The CTA provides that information disclosed to FinCEN will not be made public. However, the law also states that such information can be disclosed (1) by request of a local, state, tribe, or federal law enforcement agency (with the authorization of a court of competent jurisdiction), (2) by a request made by a federal agency on behalf of a foreign law enforcement agency, or (3) by a request made by a financial institution with the customer's consent.

On December 21, 2023, FinCEN issued a final rule on who can access BOI. FinCEN will provide BOI access to federal, state, local and tribal law enforcement agencies, financial institutions with customer due diligence requirements, and foreign governments. Those who request BOI will have to file formal requests and follow procedures outlined for each type of requestor. For more information on which agencies can access BOI information, confidentiality requirements, and procedures they must follow please see the rule on the retention and disclosure of BOI by FinCEN in 31 USC. 5336(c)⁽⁴⁾.

More Information

Much of the reporting process and details are still in flux, such as rules governing access to BOI, details on how to deactivate a FinCEN identifier, and the development of an Application Programming Interface where reports can be submitted by third parties. We anticipate that further information and refinements will be released by FinCEN from time to time. Please contact your M&H attorney for updated information.

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⁽²⁾ 31 U.S.C. 5336(h) and 31 C.F.R.1010.380(g)(4)(iii)

⁽³⁾ 31 C.F.R. 1010.380(b)(4)

⁽⁴⁾ 31 U.S.C. 5336(c)



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