

Beneficial Owner CTA Reporting Shouldn't Be Put Off Any Longer

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The Corporate Transparency Act has thrust legal practitioners onto a tightrope of mandatory reporting, offering little guidance on how to avoid hefty civil and even criminal penalties.

With the close of the first reporting year fast approaching and no sign of relief on the horizon, entities affected by the CTA should ensure they understand their reporting requirements and allow themselves ample time to follow the strict (though often unclear) regulations.

Under the CTA, which took effect Jan. 1, a reporting company is an entity that is created or registered to do business through filing with a US state or tribal jurisdiction. All reporting companies must report certain information regarding their beneficial owners to the Financial Crimes Enforcement Network, or FinCEN. Some entities listed in the CTA regulations are excluded from this definition—namely those that are already subject to separate reporting and governmental oversight.

The CTA applies to entities that existed before 2024 in addition to those created after Jan. 1. This is the case even if the entity ceases to exist prior to its applicable reporting deadline. If an entity existed for even one day this year, it must file an initial report with FinCEN.

The beneficial owners of an entity are those who either have substantial control over the reporting company or own or control 25% or more of the ownership interests of a reporting company. The regulations give some guidance on who should be reported under this definition, but they also include catch-all provisions that allow broad interpretation of who else is reportable.

Newly created or registered entities also must report their company applicants. Each entity will have at most two company applicants: the person who physically filed the application and the person who primarily directed or controlled the filing.

For all beneficial owners and company applicants, an individual must be the one reported. If a reporting company is owned by another reporting company, or is managed by a corporate services provider, then the analysis must pierce through to the individuals who are considered to own or control the initial reporting company through their ownership or control of the owning reporting company. This can be the beneficial owners of the owning reporting company, or even simply an employee who exercises reportable discretion over the initial reporting company.

An exception to this is when the owning or controlling company is an exempt entity. In that case, only the name of the exempt company must be reported. The legal name, date of birth, current address, and unique identifying number must be reported for each beneficial owner and company applicant, along with an image of the identification document from which the identifying number came.

If an individual is reportable for multiple entities, or if a reportable individual doesn't feel comfortable sharing their personal information with those preparing a report, they can obtain a unique FinCEN ID. The individual would have to submit personal information to receive the ID, but only their ID number would then need to be reported.

The deadline for filing beneficial ownership information reports generally is 30 days after the entity is officially created or registered to do business. But the deadline for newly created or registered entities is 90 days after the entity's creation or registration until the end of 2024. Entities that existed before 2024—pre-existing entities—have until Dec. 31 of this year to file their initial reports.

Many reporting companies have delayed their reports, hoping that either more guidance would come out clarifying the requirements or that the CTA would be deemed unconstitutional—in which case they could avoid reporting altogether. But the CTA doesn't seem to be going anywhere anytime soon, and while more guidance has been [published](#), there are still many important questions left unanswered.

With the filing deadline for pre-existing entities looming, practitioners working with reporting companies should not put off gathering the requisite information and preparing reports any longer. The first step is determining if the entity qualifies as a reporting company or fits within the description of one of the 23 entity types exempted from the definition. If the entity is required to report, the next step is determining who must be reported as a beneficial owner.

Determining what level of involvement qualifies as substantial control can be very difficult. Even determining whether someone has a 25% ownership interest can become complicated when, for example, a potential beneficial owner lives in a community property state or has various direct or indirect ownership interests in the reporting company that must be aggregated.

The lack of guidance from FinCEN only amplifies this difficulty. Once the beneficial owners have been determined, a practitioner must either collect the required information and file the report or enlist a corporate services provider to handle the filing.

Filing an initial report isn't the final step. It's imperative to be aware of the rules regarding changes to reported information. If any piece of a beneficial owner's reported information changes, an updated report must be filed within 30 days of the change.

If the beneficial owner has a FinCEN ID, they must update the information on their FinCEN account within the same time frame, and a new report will not need to be filed. Practitioners should notify all reportable individuals of this requirement and ensure they understand the potential repercussions of failing to notify the company of such a change.

Before the Dec. 31 deadline, begin working with your attorney, tax preparer, or other trusted adviser today to prepare any necessary reports before everyone gets caught up in the inevitable rush of last-minute filings and end-of-year tax planning.

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