

The Corporate Transparency Act: What Attorneys Need to Know

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In an effort to combat financial terrorism and money laundering within the United States,¹ the bipartisan Corporate Transparency Act was enacted by Congress on January 1, 2021.² The Corporate Transparency Act promulgates a beneficial ownership reporting requirement, whereby domestic and foreign entities in the United States will be required to report their beneficial ownership information to the Financial Crimes Enforcement Network (“FinCEN”). The information will be used to create a database of the legal entities operating within the United States with current ownership information—the first domestic database of its kind. Although the new rule goes into effect on January 1, 2024, attorneys should have a plan in place for handling the reporting requirements in advance of January, particularly for entities to be formed in the new year.

Reporting Companies

FinCEN is collecting information about beneficial ownership from “reporting companies.” A reporting company is a domestic entity created by filing with a secretary of state, or a foreign entity registered to do business by filing with a secretary of state. Certain entities will be exempt from the reporting requirements, such as large operating companies, inactive entities, and tax-exempt entities.³

Beneficial Owners

FinCEN considers a beneficial owner to be any individual who, directly or indirectly, either exercises substantial control over a reporting company or owns at least 25% of the ownership interest of such reporting company.

If your entity has a reporting requirement, you will need to report the following information about the beneficial owners:

- Full legal name
- Birthday
- Residential address
- Unique identifying number from a passport or driver’s license (with a photocopy of passport or driver’s license)

If a beneficial owner, or any of a beneficial owner’s reported information changes, you will have thirty (30) days from the date of the change to update the beneficial owner information with FinCEN.

If your entity is currently exempt from the reporting requirement, be mindful that a change in circumstance (i.e., no longer qualifying as a large operating company) could trigger a reporting requirement and result in unintentional noncompliance.

Additionally, if your entity previously had a reporting requirement and becomes exempt (i.e., the entity now meets the definition of a large operating company), you have an obligation to proactively inform FinCEN that your reporting requirement no longer exists.

Company Applicants

Here's where reporting becomes tricky, the person or entity who filed the paperwork to establish the reporting company (a "company applicant") also has to report information about themselves to FinCEN. Reporting companies will need to report the following company applicant information for entities created as of January 1, 2024, in addition to the beneficial ownership information:

- Full legal name
- Birthday
- Business address
- Unique identifying number from a passport or driver's license (with photocopy of passport or driver's license)

As with beneficial ownership information, if a company applicant's reported information changes, the updated information must be reported to FinCEN within thirty (30) days of the change.

Deadlines

If your entity is in existence as of December 31, 2023, you will have until December 31, 2024 to comply with the beneficial ownership reporting requirement.

If you form an entity with a secretary of state in 2024, you will have thirty (30) days from the entity formation to fulfill your reporting obligations. This means that as early as February 2024, entities could be found to be in noncompliance with the beneficial ownership reporting requirements.

Beneficial Ownership Secure System

FinCEN will collect and store beneficial ownership and company applicant information in the new Beneficial Ownership Secure System. The database will not be publicly accessible, but it will be accessible to "authorized recipients" including domestic law enforcement, international law enforcement, financial institutions, federal regulators and the Department of Treasury.

As we head into the second half of 2023, it is a good idea to reach out to clients to determine who will be fulfilling the reporting requirement and begin to collect the necessary information to comply with these requirements in the new year.

With special thanks to Tyler C. Bartholome.

1. The Financial Action Task Force described the United States as attractive to abuse domestically and globally due to the "relative ease" with which entities can be established. <https://www.fatf-gafi.org/en/publications/Mutualevaluations/Mer->

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2. <https://www.congress.gov/bill/116th-congress/house-bill/2513>.

3. The full list of the 23 types of exempt entities is available in the final rule published by FinCEN.

<https://www.federalregister.gov/documents/2022/09/30/2022-21020/benefici...>
