

Practice Update

Corporate Transparency Act: An Overview

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The Corporate Transparency Act (CTA) became federal law on January 1, 2021, as part of the Anti-Money Laundering Act of 2020. The new rule, which will go into effect on January 1, 2024 (the “Effective Date”), requires companies to disclose certain required information regarding the persons who ultimately own or control the company to the U.S. Treasury’s Financial Crimes and Enforcement Network (FinCEN), unless the company is eligible for an exemption. Civil and criminal penalties, up to and including imprisonment, may be imposed for failure to comply with reporting obligations.

Akerman is pleased to provide this high-level overview of the CTA, as of November 22, 2023. We urge all non-exempt businesses to immediately begin the process of preparing to file the required reports for all entities that do not qualify for an exemption.

Who is Required to Report?

The definition of a “reporting company” under the CTA is expansive and applies to domestic companies that are created by the filing of a document with a U.S. state or tribal authority, such as a secretary of state or similar office, and foreign companies that are registered to do business within the United States, subject to 23 entity exemptions. A reporting company is required to report information related to any “beneficial owner,” which means each individual who, directly or indirectly, either exercises

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“substantial control” over the reporting company or owns or controls at least 25% of the ownership interest in the reporting company. In addition to beneficial owners, each reporting company (formed on or after the Effective Date) is required to disclose a “company applicant.” The company applicant is defined as the individual primarily responsible for directly filing the document that creates the domestic company or registers the foreign company and the individual or individuals who directed or controlled the filing of that document.

What are the Exemptions?

The exemptions generally relate to large operating companies or companies already subject to rigorous state or federal reporting. Exemptions include, among others:

1. Securities reporting issuer
2. Governmental authority
3. Bank
4. Credit union
5. Depository institution holding company
6. Money services business
7. Broker or dealer in securities
8. Securities exchange or clearing agency
9. Other Exchange Act registered entity
10. Investment company or investment adviser
11. Venture capital fund adviser
12. Insurance company
13. State-licensed insurance producer
14. Commodity Exchange Act registered entity
15. Accounting firm
16. Public utility
17. Financial market utility
18. Pooled investment vehicle

19. Tax-exempt entity
20. Entity assisting a tax-exempt entity
21. Large operating company
 - Has a physical office in the U.S.
 - Employs more than 20 full-time employees in the U.S.
 - Has filed a federal tax return or, if applicable, consolidated federal tax return recording more than \$5 million
22. Subsidiary of certain exempt entities
23. Inactive entity (subject to strict requirements)

What Reporting Is Required and When?

Starting January 1, 2024, all newly formed nonexempt entities will be required to file a report with the full legal name, date of birth, current address, and a unique identifying number (such as a nonexpired passport, driver's license, or other government-issued identification) along with an image of that photo identification document for each beneficial owner and company applicant of the entity reporting to FinCEN within 30 calendar days of actual notice of creation or registration. FinCEN has filed a proposed regulation extending the reporting deadline for Reporting Companies to file an initial report to 90 days, but this has not been put into effect as of yet. Entities formed prior to the Effective Date have one year (until January 1, 2025) to report beneficial ownership information ("BOI") and they need not disclose a company applicant. After the initial report, there is no annual or quarterly filing requirement. However, required updates or corrections must also be reported to FinCEN within 30 calendar days.

How?

The BOI reporting infrastructure, Beneficial Ownership Secure System (BOSS), has yet to be finalized. FinCEN will issue additional rules related to BOSS, including who may access BOI, and what

safeguards will be required to secure and protect that information. FinCEN expects to establish the infrastructure well ahead of the filing deadlines, but timing is dependent on congressional budget approval. BOI reports will generally be considered sensitive information that should be kept confidential, but there are some exceptions, e.g., disclosure to federal, state, or foreign law enforcement (subject to specific conditions) or financial institutions (with consent).

Can a Parent Company File a Single BOI Report on Behalf of its Group of Companies?

No. Any company that meets the definition of a reporting company and is not exempt is required to file its own BOI report.

Are There Any Penalties for Noncompliance?

Yes. The CTA provides for both civil and criminal penalties (up to \$10,000 and two years' imprisonment) for willfully providing false information, failing to provide complete information or failing to update information. An individual may be held liable under the CTA if they caused the failure or were a senior officer at the time of the failure.

What Should Companies do to Prepare?

Get organized! In anticipation of implementation, entities that will qualify as reporting companies are encouraged to put in place a compliance plan. You should consider beginning the process of compiling reporting information, updating internal policies to effectively report information, and creating a system by which all changes to reporting information are tracked and updated. You will need to consider how to collect the required information from direct and indirect owners and others. You will also need to continuously monitor for changes that may trigger reporting requirements. Companies with complex beneficial ownership structures may want to designate a CTA compliance officer.

Contact Information

If you have any questions regarding the CTA and how it might impact your business, please contact your Akerman attorney for guidance.

Companies may also consult FinCEN's BOI website at www.fincen.gov/boi for additional information, including its Small Entity Compliance Guide and list of Frequently Asked Questions.

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