

Corporate Transparency Act FAQ's

The Corporate Transparency Act Is Fast Approaching. FAQ's On What You Need To Know

INTRODUCTION

The Corporate Transparency Act ("CTA") is a recently enacted federal law. Under the new regulations implementing the CTA, many business owners will face federal disclosure and reporting obligations regarding their entity and its beneficial owners through a filing with the federal government ("CTA Filing").

The following is a summary of some of the most frequently asked questions regarding the CTA:

1. WHAT IS THE CTA?

- The final regulations implementing the CTA become effective January 1, 2024.
- Unless an exemption applies, the CTA creates a filing requirement with the federal government for many domestic and foreign qualified entities, regardless of when formed (each, a "Reporting Company") to disclose (a) entity information, (b) beneficial ownership information ("BOI") for the beneficial owners of the entity and those in control, and (c) if the entity is formed on or after January 1, 2024, BOI for the persons involved in the formation of a Reporting Company (each, a "Company Applicant").
- The purpose of the CTA is to help the federal government combat the use of shell or front companies for money laundering and other financial crimes.

2. HOW DO I KNOW IF AN ENTITY IS A REPORTING COMPANY?

- A Reporting Company is any corporation, limited liability company, partnership or other entity that is or has been created by filing a document with the secretary of state or any similar office under the law of a state or tribal jurisdiction, and any foreign entities that are registered to do business in any state or tribal jurisdiction.
- Generally, family trusts will not be considered a Reporting Company because they are not typically created by "filing a document with the secretary of state or any similar office", however, entities owned by trusts will be considered a Reporting Company.
- If the entity is not a Reporting Company, it will not be subject to the CTA.

3. IS THE REPORTING COMPANY EXEMPT FROM THE CTA FILING REQUIREMENT?

- If the entity is a Reporting Company but is exempt from the CTA filing requirement, it will not be required to make the CTA filing.
- The CTA exempts 23 different types of Reporting Companies from the CTA filing requirements, many of which are entities that are already subject to government reporting requirements (such as, but not limited to, publicly traded companies, banks, credit unions, securities brokers or dealers, investment companies, insurance companies, state licensed insurance producers, tax exempt entities and registered public accounting firms under Section 102 of the Sarbanes-Oxley Act of 2002).

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- The most common Reporting Companies that will be exempt from the CTA filing requirement are:
 - (a) **Large Operating Companies:** (1) companies with more than 20 full-time employees in the U.S., (2) that have an operating presence at a physical office in the U.S., and (3) that filed in the previous year federal income tax returns in the U.S. demonstrating more than \$5M in gross receipts or sales in the aggregate (excluding receipts/sales from sources outside the U.S.).
 - (b) **Inactive Entities:** (1) inactive entities that were formed before January 1, 2020, (2) that are not engaged in active business, (3) are not owned by a foreign person, whether directly or indirectly, wholly or partially, (4) have not experienced any change of ownership in the preceding 12-month period, (5) have not sent or received any funds in any amount greater than \$1,000 either directly or indirectly or through any financial account in which the entity or any affiliate of the entity had an interest in the preceding 12-month period, and (6) do not otherwise hold any kind or type of assets, whether in the U.S. or abroad, including any ownership interest in any corporation, limited liability company, or other similar entity.
 - (c) **Tax-Exempt Entities**

4. WHO IS A BENEFICIAL OWNER?

- Beneficial owner means any individual who, directly or indirectly:
 - (a) exercises substantial control over the entity through any contract, understanding, relationship or otherwise; or
 - (b) owns or controls at least 25% of the ownership interests of the entity.

5. WHO IS A COMPANY APPLICANT?

- Company means an individual who:
 - (a) directly files the document that creates or first registers a Reporting Company; or
 - (b) is primarily responsible for directing or controlling the filing of the relevant document by another, if more than one individual is involved in the filing.

There must be at least one Company Applicant, however, if there are two individuals involved in the filing (i.e., one directly filing the document and the other directing that the document be filed), then they are both Company Applicants. There cannot be more than two Company Applicants¹.

NOTE:

- A Reporting Company formed before January 1, 2024 does not need to report Company Applicant information on its CTA filing.
- No Reporting Company is required to update its Company Applicant information.

¹ Lawyers and paralegals are likely to be considered a Company Applicant in many circumstances and subject to the CTA reporting/disclosure requirements.

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6. CTA FILING REQUIREMENTS

- A Reporting Company must report the following information:
 - (a) its legal name (and any d/b/a, trade, assumed or fictitious names);
 - (b) address of its principal place of business (cannot use a PO. box or address of registered agent);
 - (c) the state or jurisdiction where the entity was formed; and
 - (d) its IRS tax identification number.
- A Reporting Company must report the following for each Beneficial Owner and each Company Applicant:
 - (a) full legal name;
 - (b) date of birth;
 - (c) generally, a current residential address;
 - (d) unique ID number from a non-expired U.S. passport, state driver's license or other state or local government issued photo ID; and
 - (e) image of the document showing the unique ID number.

7. WHAT ARE THE IMPORTANT CTA FILING DATES?

- **EXISTING DOMESTIC OR FOREIGN REPORTING COMPANIES:**
On or before January 1, 2025 (one year after the effective date of the CTA), for any Reporting Company that has been formed or registered before January 1, 2024.
- **NEW DOMESTIC OR FOREIGN REPORTING COMPANIES:**
Within 30 days after its date of formation (i.e., the filing date of its Articles or Certificate), for any Reporting Company formed or registered on or after January 1, 2024.

NOTE: On September 27, 2023, the U.S. Department of Treasury's Financial Crimes Enforcement Network ("FinCEN") issued a Notice of Proposed Rulemaking which would affect companies created or registered in 2024. The proposed change would give those companies 90 days, instead of 30 days to file their initial beneficial ownership information reports. This change would only apply to companies registered in the year 2024, and companies created before January 1, 2024 would still have until January 1, 2025 to file their initial reports. As in the current rule, companies created on or after January 1, 2025 would have 30 days to file their initial reports.

8. UPDATING/CORRECTING THE CTA FILING

- Reporting Companies must update changes in beneficial ownership (i.e., adding new beneficial owners, deleting individuals that no longer fit the definition of a beneficial owner, address changes, updating expired photo identification) within 30 days after a change occurs.

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- Reporting Companies must file a corrected report within 30 days after they become aware or has reason to know of an inaccuracy in a prior report.
- Entities that are Reporting Companies but are no longer exempt from the CTA filing requirements are required to submit a CTA filing within 30 days after the exemption no longer exists.

9. HOW TO MAKE THE CTA FILING

- The CTA filing will be completed electronically and submitted to FinCEN through its Beneficial Ownership Secure System ("BOSS") website. The BOSS website is not anticipated to be available until January 1, 2024.
- The CTA filing will not be available to the public and will not be subject to Freedom of Information Act ("FOIA") disclosures.
- The CTA filing will be subject to strict confidentiality, security and access restrictions subject to certain exceptions to certain governmental agencies and other entities/persons in connection with enforcement matters.

10. THE PENALTIES FOR FAILING TO COMPLY WITH THE CTA

- Civil penalties of up to \$500 for each day that a violation continues or has not been remedied, up to a maximum of \$10,000.
- Possible imprisonment of up to 2 years for any person who willfully (1) provides, or attempts to provide, false or fraudulent beneficial ownership information or (2) fails to report complete or updated beneficial ownership information to FinCEN.

11. FREQUENCY OF CTA FILING

- The CTA filing is not an annual or recurring filing.
- However, once a non-exempt Reporting Company makes its initial filing, it is required to monitor its filing and update or correct such filing as and when necessary to reflect changes or corrections within 30 days (See No. 8 above).

Feel free to contact your MaddIn Hauser attorney or **David H. Freedman** at dfreedman@maddinhauser.com (248-351-7011) and **Jordan M. Small** at jsmall@maddinhauser.com (248-351-7001) regarding any questions you may have regarding the CTA, its applicability to your situation, how to best prepare for the reporting/ disclosure requirements under the CTA, assistance with a CTA filing, future CTA compliance and/or new provisions to be considered as part of your entity's governance documents based on the CTA.

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