

Insights

THE CORPORATE TRANSPARENCY ACT (CTA) IS COMING: CREATION OF A U.S. NATIONAL BENEFICIAL OWNERSHIP DATABASE

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SUMMARY

Potentially as soon as late 2022 or early 2023, a new U.S. regulatory requirement will come into effect which will affect over 25 million existing business entities and another 3-4 million new entities each year. The Corporate Transparency Act ("CTA") will require small legal entities, both domestic and foreign, to file information about themselves and the individuals who formed, own and control them with a division of the U.S. Treasury Department. Certain violations may result in the imposition of civil and criminal liability, including civil fines of \$500/day, criminal fines of up to \$250,000, and up to five (5) years in prison.

Below is a high-level summary of the requirements of the CTA, including who must comply, what data must be reported, when reports will be due, and what criminal and civil liability could accrue for noncompliance. In addition, [in our in-depth review](#), we address the first wave of proposed regulations implementing these requirements.

When will the regulations take effect?

- Compliance could theoretically be required sometime in 2022, although the regulator, the Financial Crimes Enforcement Network ("FinCEN"), has acknowledged the effort required for implementation, including its own need to build technical infrastructure and the impact the CTA will have on U.S. secretaries of states. FinCEN plans to carefully consider the earliest possible effective date after publication of its final implementing rule.
- FinCEN is a bureau of the Department of the Treasury that is chiefly known for its role in implementing aspects of the Bank Secrecy Act among financial institutions.

What is a "reporting company," and what are their responsibilities under the CTA?

- Any legal entity that is formed through a filing in a state secretary of state's office is potentially a "reporting company." This includes but is not limited to corporations, LLCs, most partnerships, certain trusts, and other entities. Domestic and foreign entities can be "reporting companies."
- The CTA provides twenty-three exemptions from the definition of a "reporting company," generally for larger entities or for entities that are already subject to significant state or federal regulation.

What data must reported about "beneficial owners" and "applicants"?

- About themselves:
 - Reporting companies must report their legal names (including d/b/a names), business street address, the jurisdiction where they were formed or registered, and their tax ID number.
- About their beneficial owners:
 - "Beneficial owners" are those who have substantial control over a reporting control or own or control at least 25% of it.
 - Beneficial owners must provide their legal name, date of birth, residential street address, and the ID number from a state-issued ID, including a picture of the ID.
- About their applicants:
 - "Applicants" are the individuals who made the decision to form or register a reporting company with the secretary of state, as well as those who actually perform the filing. Attorneys and similar third-party service providers may all be "applicants."
 - Each applicant must provide their legal name, date of birth, business street address, and the ID number from a state-issued ID, including a picture of the ID.
- Reporting companies, beneficial owners and applicants may apply to FinCEN for a FinCEN Identifier, which they may provide in lieu of their personal details. The requirements to obtain a FinCEN Identifier are proposed to be the same as would otherwise be required of beneficial owners.

When are reporting companies' first reports and updated reports due?

- Once the first wave of regulations takes effect, existing reporting companies will have one (1) year to make their initial report to FinCEN.

- Entities formed on or after the regulation's effective date will have only 30 days to make their first reports (assuming FinCEN does not alter the timelines in its draft regulations).
- Any changed data will have to be reported within 30 days of the change.
- Errors in reported data must be corrected within 14 days of discovery.

What happens if you don't report, report falsely, or if you mishandle reporting data:

- Willful failure to report or willfully providing false beneficial ownership information or a false document or photograph "shall" be punished with a civil penalty of up to \$500/day, plus a possible criminal fine of \$10,000 and up to 2 years in prison, or both.
- Knowingly disclosing or using beneficial ownership data for an unauthorized purpose "shall" be punished with a civil penalty of \$500/day, plus a mandatory criminal fine of up to \$250,000 or up to 5 years in prison, or both.

Who may access the data?

- Federal law enforcement, intelligence agencies and regulators, including the IRS, will be able to access the data without a court order. State law enforcement will need a court order. Exactly who may access the data, and how, will be defined in future regulations.

BCLP is actively studying the CTA. We will issue further Alerts as FinCEN's Reporting Regulations are finalized and take effect, possibly as soon as late 2022, and as FinCEN issues the Access Regulations and revises the CDD Rule. If you have specific questions about how CTA will affect your business, or whether you will need to report under the CTA, please contact Jeff Ziesman (Kansas City), Stan Koppel (San Francisco) or Shannon Wheaton (St. Louis) for assistance.

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