

The Corporate Transparency Act: New Reporting Requirements

LEGAL ALERT

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PLEASE TAKE NOTE: Beginning on January 1, 2024, the Corporate Transparency Act (“CTA”) goes into effect. The CTA imposes new federal reporting requirements on most organizations formed or doing business in the United States. These reporting requirements (the “Required Disclosures”) pertain to information relating to the following three categories: (1) the organization (the “Reporting Company”); (2) the beneficial owners of the Reporting Company (the “Beneficial Owners”); and (3) the individuals who directed the creation of the Reporting Company (the “Company Applicants”). This Alert updates and refreshes our prior Alert on the CTA, which was published on May 18, 2021.

New Reporting Requirements

In general, under the CTA:

- All *new* Reporting Companies (*i.e.*, those created on or after January 1, 2024) must file with the Financial Crimes Enforcement Network (“FinCEN”) the Required Disclosures within 90 days of formation.
- All *existing* Reporting Companies (*i.e.*, those which were created before January 1, 2024) must file the Required Disclosures by January 1, 2025. Note that Reporting Companies formed before 2024 need not report their Company Applicants.

After the initial filing with FinCEN, *all* Reporting Companies, Beneficial Owners, and Company Applicants must report any changes to the Required Disclosures within 30 days of the change.

Penalties

A willful failure to comply with these obligations exposes violators to civil penalties of up to \$500 per day and criminal penalties of up to two years in prison.

Summary of Required Disclosures and Applicability

REPORTING COMPANIES

- **Applicability:**
 - *Domestic Reporting Companies* are any entities created by filing a form with a secretary of state or similar office, such as a corporation or LLC (note that, with a few exceptions, this requirement generally will result in private trusts not being required to report under the CTA as a Reporting Company).
 - *Foreign Reporting Companies* are any entities formed under the laws of a foreign country and registered with any state to do business.
- **Exceptions:**

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- SEC-reporting companies;
- Regulated financial service and insurance companies;
- Inactive entities formed before 2020 (being inactive includes having no bank accounts);
- Common law trusts (though a trust can be a Beneficial Owner of a Reporting Company); **or**
- “Large” companies that:
 - Have over 20 full-time United States-based employees;
 - Have a physical operating presence in the United States; **and**
 - Can demonstrate an excess of \$5 million in gross receipts on its annual federal tax return.
- Note that once an entity no longer satisfies all three of the above “Large” company criteria, it will be required to report information about the Reporting Company:
 - Full legal name and any d/b/a or trade names;
 - Current address;
 - Jurisdiction where formed, with a copy of the formation document; **and**
 - EIN or other unique identification number.

BENEFICIAL OWNERS

- **Definition of a Beneficial Owner:**
 - An individual that either directly or indirectly owns at least 25% of a Reporting Company; **or**
 - An individual that either directly or indirectly exercises substantial control over a Reporting Company.
- **Required Disclosures about the Beneficial Owners:**
 - Legal name;
 - Date of birth;
 - Residential address; **and**
 - Identification documents.

COMPANY APPLICANTS

- **Definition of a Company Applicant:**
 - An individual who is primarily responsible for directing or controlling the filing of a Reporting Company’s organizational documents. (Note: this would include the lawyer/paralegal who directs the filing with the state).
 - A Reporting Company can have up to two Company Applicants.
- **Required Disclosures about the Company Applicants:**
 - Legal name;
 - Date of birth;
 - Residential address; **and**
 - Identification document.
- **Alternative Filing and Continuing Obligation:**

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- Company Applicants can apply for a FinCEN Identifier in lieu of directly disclosing their information for each Reporting Company.
- Company Applicants are required to provide FinCEN with any changes to their information within 30 days of the change, even if they no longer work with or for the Reporting Company.
- A Reporting Company formed before January 1, 2024 is not required to report its Company Applicant.

State Requirements

These federal requirements are in addition to existing and future state reporting requirements. For clients located in New Jersey, these federal reporting requirements do not replace the current New Jersey annual reporting requirements. For clients located in Pennsylvania, new state reporting requirements will go into effect in 2025 requiring annual reports that disclose, among other items, the names of all principal officers and at least one governor (defined as a partner, member, or director depending on the type of business organization).

Next Steps

Please contact your attorney at Flaster Greenberg, one of the members of our firm's CTA Task Force – Jonathan Ellis, Mariel Giletto, Anthony Gruzdis, Matthew Meltzer, David Neufeld – or any attorney in the Business & Corporate Department, to discuss how we can help determine whether the CTA applies to you or your organization and, if necessary, comply with the CTA initially and moving forward.

ATTORNEYS MENTIONED

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