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## Corporate & Finance Alert

# Upcoming Corporate Transparency Act Imposes Stringent Federal Reporting Requirements on Most Small Businesses



By **Keith A. Lazere,**  
**Jason Kosek** and  
**Kristen Hand**

### Key points:

**Effective 1/1/24, most U.S. businesses with fewer than 20 employees will be required to file basic identifying information with FinCEN by 1/1/25.**

**Exemptions include public companies, financial institutions, and businesses with more than 20 employees and \$5 million in revenue.**

**Failure to comply will trigger stiff penalties.**

The filing requirements of the Corporate Transparency Act (“CTA”), enacted in 2021, are effective January 1, 2024. The CTA requires most small companies doing business in the United States (“Reporting Companies”) to disclose information about the company, the Beneficial Owners, and the Company Applicant to the U.S. Department of Treasury’s Financial Crimes Enforcement Network. These new requirements are part of recent efforts to prevent and combat money laundering, terrorist financing, tax fraud, and other illicit activities.

If an eligible company is formed on or after January 1, 2024, the initial report is due within 30 calendar days from when the entity is created. Existing entities are given until January 1, 2025, to file their reports.

### What Entities Qualify as “Reporting Companies”?

Entities that must report under the CTA include corporations, LLCs, and other corporate entities that have been formed in the United States. Also included are foreign entities that are registered to do business in the U.S.

### Exempt Entities

CTA identifies 23 categories of entities that are exempt from the reporting requirements. These include publicly traded companies, regulated financial



services companies such as banks, credit unions, PCAOB-registered accounting firms, and insurance companies, tax-exempt entities, and inactive entities that existed before January 1, 2020.

Also excluded are larger corporations that employ more than 20 full-time employees in the U.S., operate from a physical office in the U.S., and have filed a federal U.S. income tax return for the

year prior demonstrating more than \$5 million in gross receipts of sales. If a company falls below these thresholds in the future, it must file an updated report within 30 days.

### **Who is Considered a “Beneficial Owner”?**

Beneficial Owners are individuals who, directly or indirectly, exercise “substantial control” over the company or own at least 25% of the entity. An individual exercises “substantial control” over the entity if s/he: (a) serves as a senior officer of the company, (b) has authority over the senior officers or a majority of the board of the company, or (c) has substantial influence over important decisions made by the company.

Individuals who cannot be considered as a Beneficial Owner include (a) a minor child; (b) an individual acting as a nominee, intermediary, custodian, or agent on behalf of another individual; (c) an employee of the reporting company, acting exclusively as an employee, whose substantial control or economic benefits from the company is derived only from their status as an employee; and (d) a creditor, unless it exercises substantial control or has 25% ownership in the reporting company.

### **Who is a “Company Applicant”?**

A Company Applicant is either the individual responsible for filing documents for creating the entity or, if more than one individual engages in filing the documents to form the entity, the individual primarily responsible for directing or controlling the filing. In some cases, the company applicant will be a beneficial owner of the entity. Reporting companies created before January 1, 2024, need not include information about the Company Applicant in their report.

### **What Information Must Be Reported?**

The report must contain the following information about the Reporting Companies:

1. Full legal name of the entity
2. All trade or d/b/a names
3. The address of the entity’s principal place of business
4. The jurisdiction of formation
5. The entity’s taxpayer ID number

Additionally, the following information must be included for the Beneficial Owner and Company Applicant:

1. Full legal name
2. Date of birth
3. Current residential address
4. An identification number assigned by an issuing jurisdiction, accompanied by a copy of the ID document

### **Initial Reports Must Be Updated If Applicable**

If there is a change in any information initially reported, updates must be filed within 30 days from when the change occurs. Some changes that would require an updated report include changes in the Beneficial Owner, a Reporting Company becoming eligible for exemption, transfer of ownership when a minor child becomes eligible, transfer of ownership due to death, or any changes to the information on an identification document that was previously submitted, such as a change in legal name or address.

### **Penalties for Violating the Act**

Failure to comply with the act or willfully providing false or fraudulent information in the reports may result in both civil and criminal penalties. Those who violate the act may be subject to a penalty of \$500 per day for each day the violation is without correction, with a maximum penalty of \$10,000. Ad-

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ditional penalties may include up to 2 years imprisonment. If the person who submitted the inaccurate report did not knowingly submit the false information and voluntarily corrects the report within 90 days, they may be relieved of any civil or criminal liability.

### **What to Do Now**

Entities that believe that compliance with the CTA applies to them should contact counsel before January 1, 2024 to determine whether their filing is required. Additionally, if you believe that your reporting might be problematic, based on your ownership structure, or if your entity is “mostly dormant,” you should address these issues well in advance of 2024.

Moreover, every company should amend its Operating Agreements to ensure that a member is responsible for updating the company’s CTA filing. This will facilitate compliance with the CTA going forward and ensure the company will not be subject to penalties for CTA violations. ▲

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**KEITH A. LAZERE** focuses his practice on Corporate and Commercial Litigation at the trial and appellate levels in state and federal court. He represents clients in sophisticated commercial and business litigations involving business torts, fraud, breach of contract, corporate and partnership disputes and debtor and creditor rights.

[klazere@andersonkill.com](mailto:klazere@andersonkill.com)  
**(212) 278-1049**

**JASON KOSEK** is an attorney in Anderson Kill’s New York office. He focuses his practice on insurance recovery, exclusively on behalf of policyholders, as well as on regulatory and white collar practice.

[jkosek@andersonkill.com](mailto:jkosek@andersonkill.com)  
**(212) 278-1028**

**KRISTEN HAND** is a law student at the University of Connecticut School of Law and the Eugene Anderson Law Clerk with us this summer.

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