



BASSFORD REMELE

THE CORPORATE TRANSPARENCY ACT WHAT YOU NEED TO KNOW

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The Corporate Transparency Act (CTA), which went into effect January 1, 2024, represents a significant shift in the regulatory landscape for small businesses in the United States. Enacted as part of the National Defense Authorization Act for Fiscal Year 2021, the CTA mandates the reporting of beneficial ownership information to the Financial Crimes Enforcement Network (FinCEN), in an effort to make it more difficult for individuals to use complex corporate structures to facilitate illegal activities, evade taxes, or launder money. The days of anonymity benefits of incorporating in places like Delaware are gone (at least for now).

Who Does This Apply To?

The CTA applies broadly to corporations, LLCs, and other similar entities created by the filing of a document with a secretary of state or similar office under the law of a state or Indian tribe.

Of note for small business owners, your business is exempt from the CTA if it meets two requirements: (1) the business has an annual revenue of at least \$5,000,000 and (2) has more than 20 full time employees.

The CTA provides a litany of other exemptions. For instance, the following entities are exempt from the CTA: publicly traded companies, banks, credit unions, and insurance companies. The rationale behind these exemptions is that such entities are already subject to substantial regulatory scrutiny and, in many cases, have existing beneficial ownership disclosure requirements.

What Does the Filing Entail?

Businesses subject to the CTA must report certain information about their beneficial owners to FinCEN in a BOI (Beneficial Owner Information) report. Under the CTA, a “beneficial owner” is defined as any individual who, directly or indirectly, exercises substantial control over an entity, or owns or controls at least 25% of the ownership interests of an entity. This broad definition is intended to capture a wide range of control and ownership scenarios, ensuring that the actual individuals behind business entities are identified and recorded.

In addition to the initial filing, there are ongoing compliance filing requirements.

When Does the Filing Have to Be Completed?

| Entity Type | BOI Filing Deadline |
|--|------------------------------------|
| Entities in Existence Prior to January 1, 2024 | On or before January 1, 2025 |
| Entities Formed on or after January 1, 2024 | 90 days from the date of formation |
| Entities Formed on or after January 1, 2025 | 30 days from the date of formation |

What If I Fail to Comply with the CTA?

There are civil and criminal penalties for failing to comply with the CTA. These penalties include civil monetary penalties of up to \$500 for each day a violation continues and/or criminal penalties of up to \$10,000 in fines and 2 years in prison. Consequently, businesses must be diligent in understanding their obligations under the CTA and ensuring that their reporting is accurate and timely.

Wasn't the CTA Just Found to be Unconstitutional?

On March 1, 2024, an Alabama federal court ruled against certain provisions of the CTA, a move that may significantly impact the CTA's regulatory landscape.

The court's ruling stems from concerns over privacy and the regulatory burden on small businesses. In the court's holding, it notes that the CTA's requirements could infringe on individual privacy rights and impose undue hardships on small entities. If upheld, the court's ruling could result in changes to the CTA or lead to a more nuanced application of its provisions. Conversely, the court's ruling is pending an appeal, and the ruling may be struck down in part or in its entirety.

While there is injunction in place on parts of the court's ruling, the injunction is limited in scope. The injunction only applies to the defendants in that case and the ruling **DOES NOT** affect any other entity's obligations under the CTA.

We will monitor this and similar court actions and will continue to provide you with information on developments.

The Corporate Transparency Act marks a pivotal development in the U.S. government's efforts to enhance transparency and combat financial crimes facilitated through the misuse of corporate structures. By shedding light on the beneficial owners of U.S. entities, the CTA aims to deter illegal activities and promote a more transparent business environment. Businesses affected by the CTA will need to navigate these new reporting requirements carefully, ensuring compliance to avoid penalties while contributing to the broader goal of curbing illicit financial flows.

About the Authors



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