

Corporate Transparency Act Summary

In 2021, Congress enacted the Corporate Transparency Act (CTA) in a broad effort to identify companies and individuals engaged in money laundering, drug trafficking and other global criminal activity and to create a registry of businesses with less than \$5 million in annual sales and fewer than 20 employees. The CTA assigns the Treasury Department's Financial Crimes Enforcement Network (FinCEN) with identifying such businesses.

The CTA will impact owners, control persons and other principles of almost every small corporation (C and S) limited liability company, limited partnership, certain trusts and other closely held entities. A majority of the entities created by individuals as part of an investment plan (e.g., a holding company for securities, rental real estate or small business,), an estate plan (e.g., an LLC that holds various investments to facilitate trust funding or administration), or asset protection (an entity created to insulate its assets and owners from claims) must report certain information about its "beneficial owners" to the Financial Crimes Enforcement Network or "FinCEN."

Beneficial Owners

Under the CTA, a beneficial **owner** can fall into one of two categories, defined as any individual who, directly or indirectly, either:

1. Exercises substantial control over a reporting company, or
2. Owns or controls at least 25% of the ownership interests of a reporting company.

An individual exercises "substantial control" over a company if the individual (A) serves as a senior officer of the company; (B) has authority over the appointment or removal of any senior officer or a majority of the board; or (C) directs, determines, or has substantial influence over important decisions made by the reporting company, even if such person has no equity interest in the company.

Individuals may exercise control directly or indirectly. Indirect ownership or control of a company or its ownership interests may include the following:

- Joint ownership with one or more other persons
- Through another individual acting as a nominee, intermediary, custodian, or agent
- As trustee, grantor/settlor, or beneficiary of a trust
- Through ownership or control of one or more intermediary entities that separately or collectively own or control ownership interests of the reporting company

The following are not considered beneficial owners of a reporting company:

- Minor children (however, the reporting company must report information regarding the minor child's parent or legal guardian)
- An individual acting as a nominee, custodian, or agent on behalf of another individual, in which case that individual would be the beneficial owner
- An employee of the reporting company, acting solely as an employee, provided that the person is not a senior officer of the entity
- An individual whose only interest in a reporting company is a future interest through a right of inheritance
- A creditor of the reporting company

Company Applicant

For all reporting companies created or registered on or after January 1, 2024, information concerning the company applicant(s) of the reporting company must be reported to FinCEN along with information concerning beneficial owners. As a result, both clients and advisors should be aware of who is, and who is not, a "company applicant."

A "company applicant" is: (a) the person who directly files the document that creates or registers the reporting company; and (b) if more than one person is involved with the filing of the document, the person who is primarily responsible for directing or controlling the filing.

The regulations under the CTA specify that there can be no more than two company applicants. The regulations also do not define the phrase "primarily responsible for directing or controlling the filing."

Trustees

Trustees must report themselves and any beneficiaries if the trust holds (i) at least 25% ownership and control of a reporting company, or (2) the beneficiary is the sole recipient of the trust's income and principal, or (3) the trust's Grantor retains the right to revoke the trust or withdraw assets. Reporting is also necessary if the trust holds any amount of ownership and control in the reporting company, and the trustee (or an advisor, protector, designated representative, or other individual) either owns a majority of voting rights, can direct important company decisions, or has the authority to replace a majority of Directors or senior officers.

Certain trustees and beneficiaries are exempt from reporting, including corporate trustees not controlled by beneficiaries, minors (although their parents or guardians are required to report), employees, nominees, custodians, or agents for the trustee, individuals anticipating future trust benefits, creditors of the trust, and non-profit entities.

Report Filings

Effective January 1, 2024, new entities will have to file a report within 90 days (recently increased from 30 days) of the creation of the entity. Entities already in existence on January 1, 2024 have until January 1, 2025 to file a report that contains information about (1) the reporting company, (2) the reporting company's beneficial owners, and (3) "company applicants" who made the filings to create the entity.

Information about the reporting company includes:

- Full legal name
- Any trade name or "d/b/a" name
- Current address (no c/o or attorney, CPA address or other advisor address may be used)
- Jurisdiction of entity formation
- Federal taxpayer ID number

Information about individual beneficial owners and company applicants includes:

- Full legal name
- Date of birth
- Current address (no post office boxes)
- Unique identifying number and issuing jurisdiction (e.g., U.S. passport or driver license)
- Image of document with identifying number

Alternatively, individuals and entities may apply for and obtain a FinCEN identifier, which can be included on subsequent filings in lieu of this information. This could make the filing process more efficient for frequent filers.

If there is any change with respect to information previously reported, the reporting company is required to file an updated report within 30 calendar days after the date on which the change occurs. Examples of changes that would require an updated report include the following:

- Changes in who is a beneficial owner, e.g. due to transfers of ownership or sales of additional ownership interests
- A reporting company becoming exempt from the reporting requirements

- Transfers of ownership interests due to an owner's death
- Transfers of ownership when a minor child reaches the age of majority
- Any changes to an identifying document previously submitted, e.g. changes in name, address, or identifying number

In addition, if the reporting company becomes aware of mistakes or inaccuracies in a report that has already been filed, it must file a corrected report within 30 calendar days after the date on which the reporting company becomes aware or has reason to know of the inaccuracy.

Individuals and entities who do not comply with the CTA or provide inaccurate or misleading information to FinCEN will be subject to various penalties associated with noncompliance. Any person that commits reporting violations may be held liable for up to \$500 per day, not to exceed \$10,000, and may face up to two years in prison for violating the CTA.

There are certain actions that you may wish to consider taking before the end of the year:

- Dissolve unneeded entities to avoid CTA compliance.
- If you will need a new entity, form it in 2023 so that CTA filing rules are delayed until January 1, 2025.
- If you have created a trust in which you or other persons have no or limited contact, whether as a beneficiary, trustee, trust protector, distribution or investment advisor, you may wish to terminate the trust before 2024, to avoid subjecting these persons to the compliance provisions of the CTA.

We will shortly begin the process of reviewing your entities and individuals to identify those that may be subject to the CTAs reporting requirements. At the same time, we suggest that you reach out to your other advisors to assemble a list of every privately held entity that they are aware of in which you own an interest, serve as a fiduciary or exert control.

We will then schedule a meeting with your advisors to discuss who is best equipped to review your entities and to assume responsibility for preparation of the forms required to be filed with FinCEN. In any case, we propose that all of your advisers work as a team.

Please feel free to contact Rona (rona@lex-life.com) for additional information.