

PUBLICATION

Countdown to the Corporate Transparency Act

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The Final Rule implementing Section 6403 of the Corporate Transparency Act (the CTA) was issued on September 30, 2022. The CTA is a sweeping, new regulation that will affect millions of companies, both domestic and foreign. The objective of the law is to require companies to reveal their beneficial ownership in order to assist the U.S. government in its efforts to identify bad actors, both foreign and domestic, who use the anonymity provided by various company structures in furtherance of their lawless activities. It is important that companies, their owners, and their senior management, be aware of the law and its requirements, which can be both complicated and difficult to navigate. There is a high likelihood that anyone reading this will be impacted by the law's reach and, consequently, should understand it and be prepared to comply with it as applicable.

Effective January 1, 2024, domestic entities created through the filing of a document with a state government, and foreign entities registering to do business in the United States through the filing of a document with a state government, are required to submit company information, beneficial owner information and company applicant information to the Financial Crimes Enforcement Network (FinCEN). Entities formed on January 1, 2024, or later will have 30 days from creation or qualification to submit such information. On September 28, 2023, however, FinCEN issued a request for comment on a proposal to extend the 30-day time period to 90 days for the submission of information for such companies. Should such proposal be finalized, the extension will only apply through 2024 with the 30-day time period to be reinstated as of January 1, 2025. This is only a proposal at this time and until implemented such entities should proceed with the 30-day timeframe in mind. The 30-day time period will be triggered "by the earlier of the date on which the reporting company receives actual notice that its creation (or registration) has become effective or a secretary of state or similar office first provides public notice, such as through a publicly accessible registry, that the domestic reporting company has been created or the foreign reporting company has been registered." Entities formed before January 1, 2024, will have until January 1, 2025, to submit company information and beneficial owner information, but will not be required to submit company applicant information. Companies are expected to submit their filings via a secure, online platform administered by FinCEN called the Beneficial Ownership Secure System or BOSS.

The Regulations, however, exempt 23 types of entities from being deemed a reporting company. These exempted entities tend to be larger or more heavily regulated entities. The exempt entities currently include the following:

- (i) Securities reporting issuer;
- (ii) Governmental authority;
- (iii) Bank;
- (iv) Credit union;
- (v) Depository institution holding company;

- (vi) Money services business;
- (vii) Broker or dealer in securities;
- (viii) Securities exchange or clearing agency;
- (ix) Other Exchange Act registered entity;
- (x) Investment company or investment advisor;
- (xi) Venture capital fund adviser;
- (xii) Insurance company;
- (xiii) State-licensed insurance provider;
- (xiv) Commodity Exchange Act registered entity;
- (xv) Accounting firm;
- (xvi) Public utility;
- (xvii) Financial market utility;
- (xviii) Pooled investment vehicle;
- (xix) Tax-exempt entity;
- (xx) Entity assisting a tax-exempt entity;
- (xxi) Large operating company;
- (xxii) Subsidiary of certain companies; and
- (xxiii) Inactive entity.

Whether a company falls under one of the above exemptions must be considered in connection with the specific definitions related to such exemption as specified in the regulations. For example, while (xv) above refers to "Accounting firm," the regulations define Accounting firm for purposes of the Act as any "public accounting firm registered in accordance with Sec. 102 of the Sarbanes-Oxley Act of 2002." One sweeping exemption, namely for large operating companies, defines "large operating company" as a company that: (1) employs more than 20 employees on a full-time basis in the United States; (2) filed in the previous year's Federal income tax returns in the United States demonstrating more than \$5,000,000 in gross receipts or sales in the aggregate, including the receipts or sales of other entities owned by the entity and through which the entity operates; and (3) has an operating presence at a physical office within the United States.

Reporting companies must file specified information on each of the company's beneficial owners with the understanding that a "beneficial owner" is any individual who exercises substantial control over the reporting company or owns or controls at least 25 percent of the ownership interest of the reporting company. The information to be reported includes the following:

- (i) Full legal name;
- (ii) Date of birth;
- (iii) Current residential address; and
- (iv) A unique identifying number and issuing jurisdiction from an acceptable identification document, along with an image of that document. Such a document might include a driver's license or passport.

Excluded from the definition of beneficial owners are: (i) minor children (parents or guardians are required to report), (ii) nominees, (iii) employees, other than senior officers, (iv) future inheritors; and (v) creditors.

Company applicant information, which is also required for those reporting companies formed as of January 1, 2024, should consist of the same required information as specified above. However, company applicants may use a business address or residential address. Moreover, the definition of "company applicant" also extends to any individual who is primarily responsible for directing or controlling the filing of such document by another person.

Changes to a reporting company's information must be updated within 30 days from the time the applicable change took effect. Should a company discover that information submitted was inaccurate, corrected information must be submitted within 30 days of when the company became aware of any such inaccuracy.

While in some instances identifying a company's beneficial owners might be straightforward, in other instances such identification could be considerably more difficult. For example, determining whether an individual owns 25 percent or more of an ownership interest in a company must take into consideration an ownership interest in equity, stock, or voting rights; a capital or profit interest; convertible instruments; options or other non-binding privileges to buy or sell any of the foregoing; and any other instrument, contract, or other mechanism used to establish ownership. Therefore, a reporting company may have multiple types of ownership interests. An individual that does not own the requisite 25 percent ownership interest can still exercise "substantial control" in which case that individual will be deemed a beneficial owner under the regulations. An individual has "substantial control" if that individual (1) is a senior officer; (2) has authority to appoint or remove certain officers or a majority of directors of the reporting company; (3) is an important decision-maker; or (4) has any other form of substantial control over the reporting company.

The regulations provide individuals and reporting companies with the option to receive a "FinCEN Identifier" to simplify future reporting submissions. Once a beneficial owner has obtained a FinCEN Identifier by submitting the required, detailed information, reporting companies may subsequently submit the number in place of submitting the detailed information specified above.

The information submitted by reporting companies will be received, stored, and maintained in a secure database held to the highest level of security afforded under the Federal Information Security Management Act. Access to the information will only be permitted to the following parties:

- (i) Any federal agency engaged in national security, intelligence, or law enforcement;
- (ii) Federal regulatory agencies for the purpose of their supervision;
- (iii) State, local, and tribal law enforcement agencies with court authorization;
- (iv) Foreign law enforcement agencies requested through an intermediary federal agency; and
- (v) Financial institutions in accordance with customer due diligence requirements with the consent of the reporting company.

Penalties for the willful failure to report complete or updated beneficial ownership information, or the willful submission of or attempt to provide false or fraudulent beneficial ownership information can be severe. These penalties may include civil fines of \$500 per day for each day a violation continues and criminal penalties of imprisonment for up to two years and/or a fine of up to \$10,000.

The objective of this alert is to provide the reader with a general knowledge of the Act's key requirements. We will, however, be following up with additional alerts to drill down further on various aspects of the law to provide the reader with a deeper understanding of the Act and what steps can be taken to be, and remain, compliant.

Should you have any questions about the Corporate Transparency Act and how it could affect your business, reach out to [Perry F. Sofferman](#) or any member of Baker Donelson's [Corporate Group](#).