

The Corporate Transparency Act (“**CTA**”) goes into effect on January 1, 2024 and will require many existing and newly formed entities to report personal information about its beneficial owners to the U.S. Treasury’s Financial Crimes Enforcement Network (“**FinCEN**”). Not only may many of the entities in our affordable housing and community development transactions now be required to disclose their beneficial owners to FinCEN, but penalties for noncompliance are stiff. Read more below about the Corporate Transparency Act and how it may affect your business, and please do not hesitate to reach out to your Applegate & Thorne-Thomsen attorney with any questions.

What is the Corporate Transparency Act?

The CTA was passed by Congress in 2021 to enhance transparency in entity ownership structures and to address issues of and combat money laundering, tax fraud, terrorism and other illicit activities. Effective on January 1, 2024, “Reporting Companies” will be required to submit a “Beneficial Ownership Interest” (“**BOI**”) report which discloses certain information regarding their beneficial owners to FinCEN. The information reported to FinCEN will not be publicly available but FinCEN is authorized to disclose the information to US federal law enforcement agencies. The CTA is intended to improve transparency into entity ownership structures and is particularly targeted to smaller businesses.

When are BOI Reports Due?

The CTA comes into effect on January 1, 2024. For Reporting Companies formed on or after January 1, 2024, the initial BOI report must be submitted within 30 calendar days of the date that the entity was formed. FinCEN recently issued a notice of proposed rulemaking which, if adopted, would extend the deadline for filing the initial BOI report for entities formed in 2024 to 90 days. Existing entities formed prior to January 1, 2024 will have until January 1, 2025 to file their initial BOI report.

There is no annual or continued reporting requirement after the initial BOI report is filed, however, if any reported information has changed, an updated report will need to be filed within 30 days of the change.

What is a Reporting Company?

A “Reporting Company” is any entity formed by the filing of a document with a secretary of state or similar state office (e.g. corporations, LLCs, LPs, LLLPs).

There are 23 exemptions to what constitutes a Reporting Company and exempt entities are therefore not required to submit a BOI report. The exemptions include, but are not limited to, tax-exempt entities, governmental authorities, banks, “large operating companies” (defined as an entity that: (a) employs more than 20 full time employees in the US; (b) has an operating presence at a physical office within the US; and (c) filed a federal tax return in the US for the previous year demonstrating more than \$5M in gross receipts or sales); and subsidiaries of certain exempt entities.

Each Reporting Company will be required to file a BOI report with FinCEN which must disclose certain information about the Reporting Company itself and its “Beneficial Owners” and “Company Applicants”.

Who are Beneficial Owners?

A Beneficial Owner is any *individual* who, directly or indirectly, either exercises “substantial control” over such reporting company or owns or controls at least 25% of the “ownership interests” of such reporting company.

An individual exercises “substantial control” over a Reporting Company if the individual:

1. Serves as a senior officer;
2. Has authority over the senior officers or a majority of the board of directors;
3. Directs, determines, or has substantial influence over important decisions made by the company; or
4. Has any other form of substantial control over the company.

Substantial control over a Reporting Company may be exercised directly or indirectly including by an individual controlling one or more intermediary entities that exercises substantial control over the Reporting Company.

Under the CTA, “ownership interest” is defined broadly and includes any equity, stock or similar instrument; capital or profit interest; convertible instruments; any put, call, straddle or other option to buy or sell an interest; or any other instruments, contract, arrangement, understanding, relationship or mechanism used to establish ownership.

Who are Company Applicants?

A Company Applicant is the *individual* who directly files the document that creates the Reporting Company and the *individual* who is primarily responsible for directing or controlling such filing. There can be up to two Company Applicants if the individual who files the formation document is different from the person with primary responsibility for directing the filing. Reporting Companies formed before January 1, 2024 will not need to include Company Applicant information in their initial BOI report.

What Information is Required to be Reported?

The following information must be submitted for the Reporting Company:

1. Full legal name;
2. Any trade name or “doing business as” name;
3. Current address;
4. The state, tribal or foreign jurisdiction of formation; and
5. The federal taxpayer ID number.

The following information must be submitted for each Beneficial Owner and each Company Applicant:

1. Full legal name of the individual;
2. Date of birth;
3. Current address;
4. A unique identifying number and the issuing jurisdiction (e.g. driver's license; US passport); and
5. An image of the document from which the unique identifying number was obtained.

Individuals will have the option to apply for a "FinCEN Identifier" which a Reporting Company may use in lieu of submitting the information above for such individual in its report. This may be beneficial to an individual that expects to be a Beneficial Owner or Applicant for many Reporting Companies as it reduces the number of times personal information is shared with others outside of FinCEN.

For Reporting Companies created before January 1, 2024, the Reporting Company will not be required to report information with respect to the Company Applicant.

Are there penalties for not complying?

The CTA includes both civil and criminal penalties for willfully providing false or fraudulent beneficial ownership information to FinCEN, or willfully failing to report complete or updated beneficial ownership information to FinCEN. The penalties are steep and apply not just to the Reporting Company itself but any individual who may, directly or indirectly, provide information in the report. Penalties include civil penalties of up to \$500 for each day that the violation continues unremedied and criminal fines of up to \$10,000, imprisonment for up to 2 years, or both.