

January 8, 2024

New Federally Required Disclosure Obligations for Business Entities

Brian A. Haskel, Esq. and Robert E. Schiappacasse, Esq.

On January 1, 2024, a new federal law—the Corporate Transparency Act (the “CTA”)—went into effect. The CTA requires most legal entities formed or registered to do business in the United States to file reports with the Financial Crimes Enforcement Network (“FinCEN”), a bureau of the United States Department of the Treasury. These entities include corporations, limited liability companies, limited partnerships and similar entities, and are referred to as a “Reporting Company” or “Reporting Companies.”

The CTA and the rules promulgated thereunder are intended to combat money laundering, terrorism, drug trafficking and other illicit activities by enabling law enforcement and other regulators to have access to information about beneficial ownership of entities. While certain states have similar corporate transparency acts under state law, this memorandum considers only a Reporting Company’s obligation under the CTA enacted under federal law.

Under the CTA, Reporting Companies must file information (i) about itself, (ii) about the individuals who directly or indirectly exercise substantial control over a Reporting Company, including specific enumerated officers and others, or own or control at least 25% of the ownership interests of a Reporting Company (“Beneficial Owners”), and (iii) about the individuals who file the formation documents that create the Reporting Company or register it to do business, and the individual, if any, who is primarily responsible for directing or controlling such filing or registration (“Company Applicants”).

Do All Reporting Companies Need to File Information?

No, there are 23 exemptions. These exemptions are generally for entities that are (i) otherwise subject to regulation, such as, issuers of a class of securities registered under Section 12 of the Securities Exchange Act of 1934, banks, insurance companies and broker dealers, or (ii) large



Brian A. Haskel, Esq.

Member of the Firm
Sills Cummis & Gross P.C.
bhaskel@sillscummis.com
(212) 500-1541



Robert E. Schiappacasse, Esq.

Member of the Firm
Sills Cummis & Gross P.C.
rschiappacasse@sillscummis.com
(973) 643-6099

operating companies, with at least 20 full time employees (not on a consolidated basis) and annual receipts and sales of at least \$5 million (on a consolidated basis).

When Must Information Be Filed?

- Reporting Companies formed **before January 1, 2024** (please note that this applies to any Reporting Company formed prior to January 1, 2024 regardless of how far back it was formed), must file their first reports by January 1, 2025, but are not required to report Company Applicant information;
- Reporting Companies **formed during calendar year 2024** must file within 90 days of being created;
- Reporting Companies **formed on or after January 1, 2025**, must file within 30 days of receiving actual or public notice of their creation or registration becoming effective; and
- Reporting Companies **must also file updates to previously filed reports**, including (i) beneficial ownership changes, (ii) corrections to inaccurate information in such reports, or (iii) qualifying for an exemption from reporting, in each case within 30 days of each such event.

Whose Information Must Be Reported?

Reporting Companies, Beneficial Owners and Company Applicants.

What Personal Information Must Be Reported?

Reporting Company. Required disclosure includes (i) name, (ii) doing business as (DBA), (iii) principal place of business in the United States, (iv) Taxpayer Identification Number, and (v) jurisdiction of formation.

Beneficial Owners and Company Applicants. Information such as (i) name, (ii) birth date, (iii) address of business if Company Applicant forms or registers entity in course of Company Applicant's business, and (iv) governmental identification such as a passport or license with a unique identifying number. It is important to understand that Beneficial Owners, in addition to direct and indirect owners of the entity, may also include non-owners who are senior officers of the entity, and certain other individuals who have direct or substantial influence over important decisions to be made by the entity.

How Does a Reporting Company File a Report?

Reporting Companies must file their beneficial ownership information electronically through FinCEN's website at www.fincen.gov/boi.

Penalties

There are significant penalties for non-compliance with FinCEN's beneficial ownership reporting rules—civil penalties of up to \$500 per day that the violation continues, per entity, and criminal penalties, including a

fine capped at \$10,000 and/or imprisonment, for willful violations. It is, therefore, important for clients to stay up-to-date on these rules and their filing obligations, especially in light of the continuing requirement to update the reporting information as changes occur.

Beware of Fraudulent Inquires

FinCEN has issued an alert on its website that bad actors are making fraudulent solicitations of information from individuals and entities who may be subject to reporting requirements under the CTA. The fraudulent correspondence may be titled “Important Compliance Notice” and asks the recipient to click on a URL or to scan a QR code. Those e-mails or letters are fraudulent. FinCEN does not send unsolicited requests. Filers should not respond to any unsolicited requests; your only communication of beneficial ownership information should be made through the official FinCEN reporting portal.

Further Guidance

This memorandum is intended to alert you to the existence of the CTA and to provide a general overview of the contents of the CTA. It does not constitute legal advice and is not intended to be relied on as such by the recipient or anyone who may come into possession of this memorandum. As such, if you have any questions or would like to discuss how the CTA applies to you and your business or personal entities, please do not hesitate to reach out to the attorney at Sills Cummis & Gross P.C. with whom you work or who handles your corporate matters. While Sills Cummis & Gross P.C. will continue to prepare the necessary paperwork to properly form and organize your legal entities, it will not make any required filings under the CTA on behalf of any client. If you are required to report under the CTA, we are available to advise and provide you with guidance in determining the information that you must report to FinCEN under the CTA in the filings you will be obligated to make in order to comply with the CTA as well as to assist you in coordinating with one or more third-party vendors who may make such filings on your behalf.