

Corporate Transparency Act

On October 4, 2023 the U.S. Treasury Department's Financial Crimes Enforcement Network (FinCEN) enacted the federal Corporate Transparency Act (CTA) which mandated disclosure of information about all corporations, limited liability companies and limited partnerships (unless exempt) and personal information about their beneficial owners as well as personal information about the persons who form those entities. This effective date under the CTA was January 1, 2024, for all such entities unless otherwise exempt by the regulation. Below is a summary of the CTA regulation, the types of entities that are exempt and the filing requirements, followed by updates on various challenges to the Act.

A new regulation under the federal Corporate Transparency Act (CTA) will require disclosure of information about all corporations, limited liability companies and limited partnerships (unless exempt) and personal information about their beneficial owners as well as personal information about the persons who form those entities. This requirement is effective on January 1, 2024, for all such entities unless otherwise exempt by the regulation.

Cozen O'Connor can assist with the determination of which of your entities are subject to this new regulation and which may be exempt. We can also assist you in making the necessary filings when required. For general questions about the CTA, contact us at cta@cozen.com.

Set forth below is a summary of the CTA regulation, the types of entities that are exempt and the filing requirements:

The regulation, issued by the U.S. Treasury Department's Financial Crimes Enforcement Network (FinCEN) under the CTA, requires all entities created or registered by the filing of a document with the secretary of state or similar office of a state to disclose to FinCEN certain information about the entity ("reporting company"), personal information about certain beneficial owners of the reporting company (beneficial owners) and personal information about the persons that form the reporting company (company applicants). Starting January 1, 2024, all corporations, limited liability companies and limited partnerships, unless exempt, will be required to file this information. This regulation will create a centralized database of information about reporting companies and their beneficial owners to combat money laundering, terrorist financing and other illicit activity and to promote national security.

A beneficial owner of a reporting company whose information must be reported is any individual who directly or indirectly either exercises substantial control over the reporting company or owns or controls at least 25% of the ownership interests of the reporting company. All members of the board of directors or board of managers and the Chief Executive Officer, President, Chief Operating Officer, Chief Financial Officer and General Counsel of a reporting company will be required to report as a beneficial owner. The regulation defines these individuals as having substantial control over a reporting company.

The regulation contains 23 exemptions. The exemptions generally relate to entities that are already subject to substantial governmental regulation, including banks, credit unions, insurance companies, securities reporting issuers, registered securities broker dealers, registered investment advisors and registered investment companies. Below are other notable exemptions:

1. Large operating companies, defined as any entity that (1) employs more than 20 full-time employees in the United States (determined on an entity basis), (2) has an operating presence at a physical office in the United States, and (3) filed a U.S. federal income tax return for the previous year showing more than \$5,000,000 in gross receipts or sales, excluding gross receipts or sales from sources outside of the United States (determined on a consolidated



Larry P. Laubach
Co-Chair, Corporate Practice Group

llaubach@cozen.com
Phone (215) 665-4666
Fax (215) 701-2346



Ingrid Welch
Member & General Counsel

iwelch@cozen.com
Phone (215) 665-4616
Fax (215) 665-2013



Steven P. Katkov
Member

skatkov@cozen.com
Phone (612) 260-9037
Fax (214) 462-3299

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basis).

2. Inactive entities, defined as any entity that (1) existed on or before January 1, 2020, (2) is not engaged in active business; (3) is not owned by a foreign person, whether directly or indirectly, wholly or partially; (4) has not experienced any change in ownership in the preceding 12 month period; (5) has not sent or received any funds in an amount greater than \$1,000, either directly or through any financial account in which the entity or any affiliate of the entity had an interest, in the preceding 12 month period; and (6) does not otherwise hold any kind or type of assets, whether in the United States or abroad, including any ownership interest in any corporation, limited liability company, or other similar entity.
3. Subsidiaries (but not parents) of exempt entities, defined as any entity whose ownership interests are controlled or wholly owned, directly or indirectly, by one or more exempt entities, except those controlled or owned by the following exempt entities (1) money services businesses, (2) pooled investment vehicles, (3) entities assisting tax-exempt entities, and (4) inactive entities.

Existing Entities. Any reporting company created before January 1, 2024 must report the following information by January 1, 2025:

1. Reporting Company Information:

A. Full legal name and any trade names or d/b/a names;

B. U. S. street address of the principal place of business or primary location where business is conducted;

C. Jurisdiction of formation or, for a foreign entity, where the entity was first registered; and

D. Taxpayer Identification Number/Employer Identification Number or, where a foreign reporting company has not been issued a Taxpayer Identification Number, a tax identification number issued by a foreign jurisdiction.

2. Beneficial Ownership Information:

A. Full legal name;

B. Date of birth;

C. Residential street address; and

D. Unique identifying number from a passport, driver's license, or other identification document issued by a government and an image of the document from which the identifying number is obtained.

New Entities. Any entity that is created on or after January 1, 2024, and before January 1, 2025, must report, within 90 days of creating the entity, the information set forth above for reporting companies and beneficial owners as well as information regarding company applicants. Any entity that is created on or after January 1, 2025, must report, within 30 days of creating the entity, the information set forth above for reporting companies and beneficial owners as well as information regarding company applicants. Company applicants are defined as (1) the individual who directly files the formation documents (i.e., attorneys or paralegals) and (2) the individual primarily responsible for directing or controlling the filing if more than one individual is involved in filing the document (i.e., attorneys, clients or client representatives). Each individual who is a company applicant must report the above information required for beneficial owners except, if a company applicant forms an entity as part of such company applicant's business, the business address rather than residential address may be used. Company applicants for a reporting company are limited to two.

If any of the above information changes, other than with respect to a company applicant, the reporting

company must file an updated report within 30 days of the change. This requirement creates an obligation on the reporting company and its beneficial owners to carefully monitor changes in such information.

Penalties. Failure to report the required information or providing false or fraudulent information is unlawful. Willful violations can result in civil penalties of up to \$500/day for any violation that has not been remedied and criminal penalties of up to \$10,000 and/or two years of prison. FinCEN is in the process of promulgating a regulation that sets forth who may access the information provided to FinCEN, and how recipients may use the information. We expect that FinCEN will adopt final versions of the beneficial owner information reporting forms later this year.

Actions to be Taken. Although the effective date is months away, we recommend determining which of your current entities are exempt and which are reporting companies. Cozen O'Connor can assist with that determination and whether there are any exemptions that are available, including by making certain changes to existing entities. If you have entities that will need to report, you should begin to collect the required information and, because of its sensitive nature, maintain it in a secure place and the firm can assist you in making any required filings.

Cozen O'Connor will continue to monitor the status of the CTA and its filing requirements. Please send any questions to cta@cozen.com.