

LEGAL ALERT

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BUSINESS OWNERS TO FACE NEW FEDERAL REPORTING OBLIGATIONS UNDER THE CORPORATE TRANSPARENCY ACT IN 2024

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As we approach the end of 2023, nearly all privately owned businesses operating in the United States must prepare for the implementation of the Corporate Transparency Act (“CTA”), a federal law taking effect on January 1, 2024, which requires new information disclosures to be made to the [U.S. Department of the Treasury](#) (“Treasury”). Most privately owned businesses existing prior to that date and those formed thereafter will be subject to the CTA.

REPORTING COMPANY REQUIREMENTS

The CTA requires “Reporting Companies” to disclose Beneficial Ownership Information (“BOI”) to the Treasury’s [Financial Crimes Enforcement Network](#) (“FinCEN”) for the purpose of combating criminal or other nefarious activities conducted through commercial enterprises, namely money laundering.

There are two types of Reporting Companies that are subject to the CTA:

1. **Domestic reporting companies** are those businesses (whether corporations, limited liability companies, or any other entity) formed by filing a document with a secretary of state or similar office in the United States.
2. **Foreign reporting companies** are those entities formed under the law of a foreign country that have registered to do business in the United States by filing a document with a secretary of state or similar office in the United States.

Essentially, the definition of a “Reporting Company” attempts to encapsulate all businesses operating in the United States, subject to twenty-three specifically enumerated exceptions. Notable exceptions include entities that are publicly traded, banks, governmental authorities, entities required to register with the [SEC](#),

venture capital fund advisers, insurance companies, accounting firms, public utilities, pooled investment vehicles, tax-exempt entities, large operating companies and inactive entities.

Large operating companies means those entities that have more than twenty (20) full time employees entirely employed in the U.S.; that conduct physical operations in the U.S.; and have filed a prior year tax return showing more than \$5 million in gross receipts or sales, not including earnings outside the U.S.

An **inactive entity** is one that:

- (1) existed on or before January 1, 2020;
- (2) has not engaged in any active business,
- (3) is not owned by a foreign person;
- (4) has not experienced any change in ownership in the preceding twelve (12) months;
- (5) has not sent or received any funds greater than \$1,000; and
- (6) does not hold any type of assets.

For an entity to qualify as “inactive,” it must meet all six of the listed criteria. Ultimately, most privately owned small businesses will be subject to the CTA’s reporting requirements.

BENEFICIAL OWNERSHIP INFORMATION BREAKDOWN

The disclosure of BOI will be made on forthcoming forms, uploaded directly to FinCEN through a secure portal, and subject to the procedures and protocols yet to be published by the Treasury. We anticipate future guidance will come rapidly as we approach year-end 2023. Companies existing prior to January 1, 2024, will have the entire calendar year of 2024 to comply with the CTA. Entities created on or after January 1, 2024, will have just thirty (30) days to comply; although FinCEN has recently proposed a rule to increase this reporting threshold from thirty (30) days to ninety (90) days. In either case, a business’s failure to comply with the CTA may result in civil monetary penalties assessed against the company, its owners, or its company applicants as well as potential criminal penalties.

BOI refers to “identifying information about individuals who directly or indirectly control a company,” according to FinCEN’s BOI FAQs. A beneficial owner is an individual who either directly or indirectly exercises substantial control over the reporting company’s business or who owns or controls at least twenty-five percent (25%) of the reporting company’s ownership interests. Note that minors owning twenty-five percent (25%) or more of a reporting company’s equity will not be reported as a beneficial owner; however, their parents or legal guardians will be.

Examples of individuals who exercise “substantial control” include a reporting company’s senior officers, individuals with the power to appoint or remove senior officers, individuals having the authority to make important decisions concerning the company, or anything else approximating significant decision-making authority using a facts and circumstances test. Important decisions include, but are not limited to, influencing the nature, scope, and attributes of the business, creating, or terminating lines of business, influencing geographic market focus, exerting control over significant assets or expenditures, and exerting influence over restructuring, recapitalizing, or amending significant governance documents.

BOI disclosures to FinCEN will include the individual’s name, date of birth, residential address, and an identification number from a government document, such as a passport or state-issued driver’s license. FinCEN is further requiring a reporting company’s BOI disclosures to include a scanned image of the

individual's identification document. Further, this information must be kept current, or the individual could face civil and criminal penalties.

PERPETUAL UPDATES NEEDED

Affected businesses must also be aware that its CTA reporting obligations are perpetual. Reporting Companies must update their information with FinCEN within thirty (30) days of any change affecting previously reported information. For example, if a senior officer of the company moves from one city to another, the officer must update his/her residential address with FinCEN. Similarly, if a reporting company experiences turnover among its senior officers, that will also require updates to FinCEN. Further, individuals engaging in certain gifting or equity transfers as part of their estate planning process must consider whether the equity transfers will result in a required update to FinCEN. Even if the reporting company obtains a new trade name or "dba," an update must be filed with FinCEN. Any such changes are required to be reported within thirty (30) days of such change, except in the case of a deceased beneficial owner, whereby the company will have thirty (30) days from the settlement of the decedent's estate. Currently, there is no requirement to report a company's dissolution or termination to FinCEN.

We anticipate additional guidance and reporting forms will be issued by the Treasury and FinCEN during the fourth quarter of 2023 and throughout 2024.

Hahn Loeser & Parks LLP provides strategic legal advice to its clients regarding corporate formation, governance, and regulatory compliance. We are available to counsel business owners who want to learn more about the CTA and to prepare their business for the coming year.

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