



## **I'm From the Government and I'm Here to Help; New Reporting Requirements Pursuant to the Corporate Transparency Act**

The Corporate Transparency Act (CTA) was enacted in 2021, as part of the National Defense Authorization Act, in an effort, misguided though it seems, to fight against money-laundering, terrorism, and misconduct through business entities. Beginning January 1, 2024, most small and mid-sized companies can look forward to mandatory filings disclosing detailed information about any individual involved in the senior management of the company and any individual who, directly or indirectly, owns 25% or more of the company's equity. If a company fails to make the required disclosures, it will be subject to fines and individuals may be subject to criminal penalties. It is estimated that this will require more than 30 million entities to file such reports in 2024, with at least five million additional entities making filings in each subsequent year.

Reporting entities will have to file a Beneficial Ownership Information (BOI) report with the United States Department of the Treasury's Financial Crimes Enforcement Network (FinCEN). FinCEN will be authorized to disclose the information in the BOI reports to law enforcement agencies, certain other governmental agencies, and, with the consent of the reporting company, to financial institutions and their regulators. The entities required to file reports, unless they fall within an exemption, include domestic corporations, limited liability companies, limited liability partnerships, and most limited partnerships and business trusts, as well as foreign entities that are registered to do business in any state or tribal jurisdiction.

While the CTA is intended to be broad to cover a variety of legal entities, there are 23 categories of reporting exemptions. The exemption categories include:

1. Large operating companies, defined as a company with (i) 20 or more full-time U.S. employees, (ii) \$5 million or more in U.S. revenue; and (iii) an operating presence at a physical office in the U.S
2. Entities registered with the SEC, such as public companies and broker-dealers
3. Banking institutions
4. Non-bank financial institutions such as investment companies, investment advisers, venture capital fund advisers, and insurance companies
5. Governmental authorities
6. Credit unions
7. Inactive entities
8. Accounting firms
9. Tax-exempt entities and entities assisting a tax-exempt entity
10. direct and indirect wholly-owned subsidiaries of most of the 23 exempt entities

In its BOI report, a reporting company will need to provide its legal name along with any trade or doing-business-as names; its primary business address; and its taxpayer identification number; its jurisdiction of formation and if a foreign entity, the state or tribal jurisdiction where the company was first registered. In addition, and most invasively, the BOI report must also set out the “beneficial owner(s)” of the reporting entity and, for companies created after January 1, 2024, the company applicant. For each such person (beneficial owner or company applicant), companies must provide the following:

- legal name
- date of birth
- current residential address
- a “unique identifying number” from an identification document such as a passport or driver’s license; and
- an image of such identification document.

For BOI reporting purposes, a beneficial owner is defined as any individual who, directly or indirectly, either exercises substantial control over the reporting company or owns or controls at least 25 percent of the ownership interests of the reporting company. Substantial control is usually indicated by (i) service as a senior officer; (ii) having authority over the appointment or removal of any senior officer or a majority of the board of directors; and (iii) having direction or substantial influence over conventionally “important decisions.” A company applicant is defined as an individual who files the document that formed the company or, for a foreign reporting company, the individual who files the document that first registers the company to do business in the United States. This definition also covers an individual who is primarily responsible for directing or controlling the filing of the formation documents. In the case of a law firm that is involved with the formation of the entity, the firm partner overseeing such filing would be covered.

Reporting companies created or registered before January 1, 2024, will have one year, until January 1, 2025, to file their initial reports with FinCEN. All reporting companies created after January 1, 2024, will have 30 days after receiving notice of the entity’s creation to file their initial BOI reports with FinCEN. In addition, reporting companies will have 30 days to report any changes to the information in their previously filed reports and must correct any inaccurate information in previously filed reports within 30 days of the reporting company becoming aware or having reason to know of the inaccuracy of information. These timelines are remarkably short. Particularly where a great many filings will need to be made with an entity that is not accustomed to anywhere near this volume of filings. It is sure to work well.

For non-exempt companies, failure to provide a BOI report to FinCEN in the permissible timeframe, or providing false information to FinCEN, will subject an individual to civil and criminal penalties, including \$500 per day for every day the violation continues (up to \$10,000), up to a two-year prison sentence, or both. There is a safe harbor protection that may be applicable if inaccurate information is submitted and corrected by a reporting company within 90 days of submission; the person was not acting to evade the reporting requirements; and did not have actual knowledge that the information contained in the original report was inaccurate.

There remain significant questions as to how tens of millions of reports will be systematically handled in 2024 alone, and there is hope that additional clarification will be provided to address such questions as to what happens when an exempt entity becomes a non-exempt entity, and vice versa. We will be monitoring these new regulations and their further clarification. As we approach 2024, we at Andrews Myers will be ready to help our clients efficiently and adroitly meet these new requirements.

**For more information, please contact [Champe Fitzhugh](#).**