

If you own a company or are you thinking of forming one in 2024 you need to disclose many personal details about the owners of your company because of Congress's passage of the Corporate Transparency Act (the "CTA"). The CTA constitutes one of the largest changes to American corporate law in decades. You must now register with and provide detailed information to the U.S. Department of the Treasury's Financial Crimes Enforcement Network ("FinCEN"). Penalties for failure to report include fines of \$500 for each day the Reporting Company is in violation of the CTA, up to \$10,000 and imprisonment up to 2 years.

### **What is the CTA?**

The CTA was enacted on January 1, 2021, over the veto of former-President Trump, as part of the National Defense Authorization Act. The CTA was an attempt by Congress to patch holes in state corporate statutes which permitted bad actors to hide their involvement and/or ownership in entities engaged in illegal activity, particularly tax fraud, money laundering and terrorism financing. The purpose of the CTA is supposed to provide law enforcement agencies and financial institutions with data on an entity's ownership and operations through the required information provided in the "Beneficial Ownership Information Report" ("BOIR").

While intended to be a mechanism to combat crime, the CTA constitutes one of the largest changes to American corporate law in decades. The CTA will impose federal requirements upon an estimated 32 million entities registered under state law and will compile the personal information of millions more individuals having ownership and/or control over those companies.

### **How does this FinCEN registration work?**

The CTA requires any new business formed between January 1, 2024, and January 1, 2025, to submit a BOIR to FinCEN within 90 days from the entity's formation under state law. Entities formed after January 1, 2025, have 30 days from formation to register. Existing businesses formed prior to January 1, 2024, will be required to register prior to January 1, 2025. The FinCEN registration may be found [here](#): The FinCEN registration requests information on (i) the Reporting Company; (ii) the Company Applicant; and (iii) the Beneficial Owners.

The Reporting Company information is more comprehensive than required by the Colorado Secretary of State. In addition to the entity's legal name on file with the secretary of state, all trade names, doing business as designations, and any alternate name under which the business operates must be disclosed. The company must provide an EIN number or a social security number of a Beneficial Owner of the entity if the Company does not have an EIN number. The FinCEN requires a U.S. Street address.

FinCEN requires all entities created after January 1, 2024, to provide "Company Applicant" information. The Company Applicant is the person who (1) directly files the BOIR, and also includes (2) the person responsible for directing or controlling the filing of the BOIR. Practically, if a manager within a company directs an assistant to submit the BOIR, both the manager and assistant would be Company Applicants under the FinCEN rules. When filling out the Company Applicant information it is important to note that a Company Applicant affiliated with the Reporting Company (i.e., an employee) would be required to report their residential address to FinCEN, but a business assisting the Reporting Company in submitting the registration (i.e. a law firm or bookkeeper) may use their business address.

Critically, all Beneficial Owners of Companies must provide the name, date of birth, residential address, and passport or driver's license information (with a photograph of the same).

### **Who is a Beneficial Owner?**

Any individual who owns 25% or more or any individual who exercises substantial control of the entity. Persons with "substantial control" typically are (1) senior officers; (2) individuals with authority to appoint or remove officers or directors; (3) important decision-makers; or (4) individuals who have any other form of substantial control over the entity.

### **Will my personal information be public?**

The FinCEN will use its best efforts to store this information in a secure and non-public database. The information will be accessible to governmental entities and financial institutions.

To streamline future filings and to add an additional layer of security, any person serving as a Company Applicant or being registered as a Beneficial Owner may obtain a "FinCEN Identifier", which will allow a registrant to provide their personal information to FinCEN in exchange for a unique identifier that may be used on future filings, in lieu of submitting personal information.

### **Is my entity exempt from the CTA?**

Unless an entity squarely fits into a registration exception, you should assume that all new and existing LLC's, corporations, limited partnerships, LLP's, certain non-profit corporations (including homeowners' associations) and other entities required to register with the secretary of state, need to be registered with FinCEN.

There are 23 exceptions to FinCEN registration, including; businesses who are already subject to federal reporting requirements, such as banks, securities brokers and dealers, insurance companies, accounting firms, public companies and registered investment companies. Another significant exception is the Large Operating Company Exception, which applies to certain companies with over 20 full-time U.S. employees, operating out of the U.S. and having more than \$5,000,000 of gross receipts or sales from U.S. sources. Non-profit corporations are generally exempt from the CTA registration requirements, but certain non-profit corporations, including homeowners' associations, are not exempt.

Another notable group excluded from the registration requirements are "Inactive Entities". An entity is considered inactive if it was formed before January 1, 2020; is not engaged in active business; maintains no foreign ownership; has not had any ownership change in the preceding 12 months; has not sent or received funds in excess of \$1,000 in the preceding 12 months; and does not hold any assets.

The prevailing view is that general partnerships are exempt from the FinCEN registration requirements as well as family trusts (except where the general partnership or trust is a Beneficial Owner of a Reporting Company).

### **Will I need to do annual filings?**

FinCEN has not created an annual reporting requirement for reporting entities. However, all Reporting Entities, whether new or existing, are required to update their original filings upon the occurrence of certain changes. These include if a company hires or fires an executive officer (even if that officer does not maintain any ownership in the entity); or if the Beneficial Owner changes their address, legally changes their name due to marriage or divorce, or even when they obtain a new driver's license. Registered Entities are required to provide the updated information to FinCEN within 30 days of becoming aware, or reason to know, that the information in the initial report has changed. It is important for business owners to keep the CTA in mind when changes occur as certain changes are required to be reported within 30 days.

### **And what if I don't register with FinCEN?**

Business owners should be mindful that the CTA imposes both civil and criminal penalties on Reporting Companies, Company Applicants, and Beneficial Owner who "willfully provide or attempt to provide false or fraudulent information" or who "willfully fail to report complete or updated information" to FinCEN. The penalties include fines of \$500 for each day the Reporting Company is in violation of the CTA, up to \$10,000 and imprisonment up to 2 years.

As liability for failing to report or for false reporting extends to potentially many persons with ownership or control of the Reporting Company, it would be wise for entities to put mechanisms in place to ensure the accurate and timely filing of all reports required under the CTA.

### **How will this affect my business moving forward?**

Aside from the hassle of compiling the information, completing the FinCEN registration, and making updates as needed, the CTA is unlikely to have much material impact on the Reporting Entities. Notwithstanding, you should expect that a valid and accurate FinCEN registration is going to be a requirement when obtaining any commercial loan or financing; applying for a business license, permit or authorization; as a title requirement when buying or selling real property on behalf of a corporate entity; and as a due diligence requirement in asset and equity purchase agreements.

As the CTA and FinCEN rules provide no leverage for an entity to demand beneficial owner information from its equity owners, officers or executives, entities should consider amendments to their corporate governing documents, equity subscription agreements and employment agreements requiring existing and future Beneficial Owners to cooperate with the entity to meet its obligations under the CTA.

FinCEN continues to issue rules and guidance regarding the CTA and it is important that entities understand these changes and how it affects their entity registrations. The attorneys at Galvanize Law are happy to assist in the BOIR registration process and to answer any questions on the CTA.

Further information regarding the CTA directed at small businesses can be found using [this link](#).

*This article is not legal advice and is being provided for informational purposes only. You should not take, or refrain from taking, any action based on the information in this article, without first consulting legal counsel on your particular facts and circumstances. If you have*

*questions on how the CTA impacts your business, or would like help in complying, feel free to contact members of Galvanize Law.*