

The
HOSPITALITY LAW
CONFERENCE

The Corporate Transparency
Act: Compliance with FinCEN's
Final Rule

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Has successfully closed hundreds of transactions involving
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Received *Best Lawyers* recognition in the areas of Real Estate
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Frequently represents clients in the hospitality industry

Represents franchised businesses in various areas of law

Received *Best Lawyers: Ones to Watch* and *Super Lawyers*
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The Corporate Transparency Act

- Enacted by Congress on January 1, 2021 to combat money laundering, tax fraud, financing of terrorism, and other crimes typically committed through shell and front companies.
- Requires certain business entities to report “Beneficial Ownership” information and disclose information on the person who created or registered the entity to do business in the U.S. to the Financial Crimes Enforcement Network (FinCEN), a subdivision of the U.S. Dept. of Treasury.
- FinCEN released its final rule implementing the CTA on September 29, 2022.

Subject Entities

- A **domestic reporting company** or a corporation, a limited liability company, and any other entity that is created by the filing of a document with a secretary of state or similar office under the law of a U.S. State or tribal jurisdiction.
- A **foreign reporting company** or a corporation, limited liability company, or any other entity formed under the laws of a foreign country and registered to do business in any U.S. State or tribal jurisdiction by the filing of a document with a secretary of state or similar office under the law of a U.S. State or tribal jurisdiction.

Exemptions

- 23 exemptions – most apply to large entities or entities already regulated by the SEC or FDIC (e.g., public companies, investment companies, venture capital fund advisers, pooled investment vehicles).
- The “*large operating company*” exemption applies to a company that:
 - employs 20 or more employees on a full-time basis in the United States;
 - has an operating presence at a physical office within the United States; and
 - filed federal income tax return in the United States during the previous year demonstrating more than \$5,000,000 in gross receipts or sales.
- Subsidiaries of exempt entities and inactive entities are also exempt.

Reporting Requirements

- The reporting company is responsible for filing, reporting, and updating information about the reporting company itself, any Beneficial Owner, and, in the case of companies created or registered on or after January 1, 2024, its Company Applicant.
 - A “Beneficial Owner” is someone who either (1) exercises substantial control over the reporting company; or (2) owns or controls at least 25% of the ownership interest in the reporting company.
 - A “Company Applicant” is an individual the individual who files the entity formation documents (in the case of a domestic reporting company) or the first registration document allowing the foreign entity to do business in the U.S. (in the case of a foreign reporting company). In addition, the definition includes any person who is “primarily responsible” for directing or controlling the filing (e.g., an attorney supervising a paralegal).

Reporting Requirements (Cont.)

- A reporting company must disclose the following information for Beneficial Owners and Company Applicants:
 - full legal name
 - date of birth
 - address
 - passport number, driver's license number, or other unique identifying number from a non-expired identification document issued to the individual by a state for identification purposes a picture ID
- The reporting company must also disclose its:
 - full legal name
 - any trade names, whether or not formally registered
 - address;
 - jurisdiction of formation or registration in the U.S.
 - tax identification number

Reporting Requirements (Cont.)

- Under the final rule, a Reporting Company must file an update to its report within 30 days after the occurrence of any change affecting information set forth in its current report, for example:
 - Changes in Beneficial Owners
 - Changes in addresses
 - Changes in formal legal names or trade names/DBAs

Penalties for Non-Compliance

- Failure to comply with the reporting requirements can result in civil and criminal penalties
- Maximum civil penalty of \$500 per day (up to \$10,000)
- Imprisonment for up to two years

- The CTA goes into effect on January 1, 2024.
- All reporting companies created or formed before January 1, 2024 will have one year to comply - their initial reports must be filed by January 1, 2025.
- All reporting companies formed on or after January 1, 2024 must comply with the CTA's disclosure requirements within 30 days of formation.
- Reporting system is still under development by FinCEN.



Who Will See This Information?

- Federal agencies, if the information is “in furtherance of national security, intelligence, or law enforcement activity”
- State and local law enforcement agencies as part of criminal or civil investigations, but only with a court order
- Financial institutions, with Reporting Company consent
- Note that information submitted to FinCen:
 - Is not publicly accessible
 - Is not subject to FOIA requests

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WE APPRECIATE YOUR
TIME AND ATTENTION!

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Thank you!