

THE CORPORATE TRANSPARENCY ACT: COMPLIANCE AMID CHANGES AND CHALLENGES

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On January 1, 2024, the Corporate Transparency Act (the “CTA”), first passed by Congress in 2021, took effect. The CTA is meant to combat money laundering and other financial crimes by requiring certain business entities to file a report with the Financial Crimes Enforcement Network, a subdivision of the United States Department of Treasury (“FinCEN”). Pursuant to this report, a business must disclose its ownership information and information about the individual who created the entity or registered it to do business in the United States. This summary outlines the key provisions of the CTA and briefly addresses the recent judicial and legislative attempts to repeal the CTA.

Reporting Companies

The reporting obligations of the CTA apply to “Reporting Companies,” which can be divided into domestic reporting companies and foreign reporting companies. A “domestic reporting company” is any entity created by filing a document with a secretary of state or similar office under the laws of a U.S. State or tribal jurisdiction. A “foreign reporting company” is an entity formed under the laws of a foreign country and registered to do business in any U.S. State or tribal jurisdiction by filing a document with the secretary of state or similar office under the laws of a U.S. State or tribal jurisdiction. The CTA does not specifically enumerate the type of entities that qualify as Reporting Companies, but the definitions provided are broad enough to cover most business entities, including limited liability companies, corporations, limited partnerships, etc.

However, not all Reporting Companies are required to file a report – there are 23 categories of Reporting Companies that are exempt from this requirement, mostly large entities and those within industries and sectors already highly regulated (e.g., insurance companies and pooled investment vehicles). Particularly common is the “Large Operating Company” exemption, which applies to entities that: (1) employ more than 20 full time employees in the United States; (2) maintain an operating presence at a physical office within the United States; and (3) claimed more than \$5 million in gross receipts or sales on last years’ federal income tax return. This often appears in conjunction with the subsidiary exemption, which applies to wholly owned subsidiaries of an exempt entity. For example, if a parent company meets the requirements for the Large Operating Company exemption, each wholly owned subsidiary of the

parent company will also be exempt. There is also an inactive entity exemption, but it is only applicable to Reporting Companies formed prior to 2020.

Reporting Information

The report must include information on the Reporting Company itself, its Beneficial Owners (as defined below), and in the case of a Reporting Company formed after January 1, 2024, its Company Applicant (as defined below). Specifically, the report must include, with respect to any Beneficial Owner or Company Applicant, the individual's: (1) full legal name, (2) date of birth, (3) address¹, (4) unique identifying number from a non-expired identification document (e.g., driver's license), and (5) a picture ID. The Reporting Company must also disclose its: (a) full legal name, (b) any trade names, (c) address,² (d) jurisdiction of formation or registration in the U.S., and (e) tax identification number.

For the purposes of the CTA, a "Beneficial Owner" is an individual 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 who either: (1) filed the documents forming the Reporting Company or, in the case of a foreign reporting company, the first registration document allowing the foreign entity to do business in the United States; or (2) is primarily responsible for directing or controlling the filing of the creation or first registration document.

Deadline; Penalties

The reporting deadline is dependent upon the date in which the Reporting Company was created or registered to do business in the United States. Reporting Companies created or registered prior to January 1, 2024 have until January 1, 2025 to file their reports. Reporting Companies created or registered on or after January 1, 2024, but before January 1, 2025, have 90 days from the date the formation/registration is effective to file. Finally, any Reporting Company formed or registered after January 1, 2025 must file its report within 30 days from the date the formation/registration is effective. If there are any changes to a previously submitted report, the Reporting Company must update the report within 30 days of the change.

¹ A residential address must be used except in the cases of a Company Applicant who forms or registers entities in the course of their business. In such case, the BOI Report must list the Company Applicant's business address.

² For domestic companies, the address provided should be the company's principal place of business. For foreign companies, the address should be the primary location in the U.S. where the reporting company conducts business.

It is the responsibility of the Reporting Company to collect, report, and update information about itself and its Beneficial Owners and Company Applicants. The willful failure to report complete or updated information, or the willful attempt to provide false or fraudulent information, may result in significant civil or criminal penalties, including a fine of up to \$10,000 and imprisonment of up to two years. Senior officers of a Reporting Company that fails to file a report may be held accountable for that failure. Lastly, Beneficial Owners who provide false information to the Reporting Company or willfully cause the Reporting Company not to file the report may be held accountable civilly or criminally.

Attempts at Repeal

Since the CTA went into effect, it has experienced numerous attempts at repeal, both judicially and legislatively. First, the National Small Business Association (“NSBA”) challenged the constitutionality of the CTA in the United States District Court for the Northern District of Alabama, alleging it exceeds Congress’ enumerated powers. *Natl. Small Bus. United v. Yellen*, No. 5:22-CV-1448-LCB, 2024 WL 899372 (N.D. Ala. Mar. 1, 2024). The Court ruled for the Plaintiffs and enjoined the CTA from being enforced against any members of the NSBA as of March 1, 2024. But the Court refused to extend its decision to any parties not a Plaintiff in the case. The federal government appealed to the Eleventh Circuit and oral arguments are set for the week of September 16, 2024. Many similar cases have been brought but were put in abeyance pending the outcome of this appeal.

It did not take long after *Yellen* for members of Congress to step in and attempt to repeal the CTA legislatively. On April 29, 2024, Representative Warren Davidson (R-OH) introduced House Bill 8147 (the “Repealing Big Brother Overreach Act”) to repeal the CTA, which was referred to the Committee on Financial Services. On May 9, 2024, Senator Tommy Tuberville (R-AL) introduced Senate Bill 4297, an identical bill to Representative Davidson’s, which was read twice and referred to the Committee on Banking, Housing & Urban Affairs. Neither piece of legislation has moved past the initial introductory phase.