

Congress Passes Corporate Transparency Act

WRITTEN BY

David W. Ghegan | Nickolas M. Guttman | Richard P. Eckman

The material set forth below was developed before the 2024 and 2025 district court injunctions regarding the CTA (which were subsequently stayed and continue to be litigated). As a result, the material set forth below, including filing deadlines, may not be current. Please consult FinCEN's [website](#) for the latest filing due dates and other information regarding the CTA and its requirements.

On January 1, as part of the 2021 National Defense Authorization Act, Congress overrode President Trump's veto to pass the Corporate Transparency Act (Act). The Act requires the Financial Crimes Enforcement Network (FinCEN) to issue regulations implementing reporting requirements for reporting companies to disclose beneficial ownership interests of certain U.S. and foreign entities by January 1, 2022.

Reporting Companies

Although the Act provides a definition of a "reporting company" — a company required to comply with the new requirements — it is likely that FinCEN's regulations will provide additional guidance to the precise scope of the Act's applicability. Banks were already subject to certain reporting requirements promulgated under the Bank Secrecy Act, but the Act imposes additional reporting requirements on entities not previously subject to such regulations. A reporting company is defined as a corporation, limited liability company, or other similar entity that is (1) created by filing a document with a secretary of state or similar office under law of a state or Indian tribe; or (2) formed under the law of a foreign country and registered to do business in the United States by filing a document with a secretary of state or similar office under law of a state or Indian tribe. Therefore, the universe of legal entities potentially subject to the Act is quite broad. The Act's definition also specifically exempts several different types of entities, including among others:

- Any entity that (1) employs more than 20 employees on a full-time basis in the United States; (2) filed a federal tax return that reported more than \$5 million in gross receipts or sales, including gross receipts by affiliates, and (3) has an operating presence at a physical office within the United States;
- Certain banks, bank holding companies, and credit unions;
- Money transmitting businesses registered with FinCEN; and
- Certain insurance companies.

Reporting Requirements

The Act requires reporting companies to identify each beneficial owner, including each owner's (1) full legal name; (2) date of birth; (3) current residential or business street address; and (4) unique identifying number from an acceptable identification document (such as a driver's license or passport) or FinCEN identifier.

Additionally, the Act defines "beneficial owner," which is similar to existing definitions under the Bank Secrecy Act and related regulations, as an individual who, directly or indirectly, through any contract, arrangement, understanding, relationship, or otherwise (1) exercises substantial control over the entity; or (2) owns or controls not less than 25% of the ownership interests of the entity. For companies that have complex legal structures with multiple owners, determining whether an individual is a beneficial owner requiring disclosure could be quite complicated, and it will be interesting to see how FINCEN regulations will address these issues. Individuals excluded from the definition of "beneficial owner" includes (1) a creditor of a corporation, limited liability company, or other similar entity, unless the creditor specifically meets the requirement of a beneficial owner; and (2) an individual acting solely as an employee of a corporation, limited liability company, or other similar entity and whose control over or economic benefits from such entity is derived solely from the employment status of the person.

Entities formed after the effective date of FinCEN regulations must file a report at the time of formation and/or registration. Existing entities must file a report not more than two years after the effective date of the regulations. Finally, any reporting company must file an updated report within one year of any change in its beneficial ownership.

Penalties

Willfully failing to report or update beneficial ownership information or willfully providing false information to regulators may result in civil fines of up to \$500 per day or criminal penalties of up to \$10,000 and/or imprisonment for no more than two years.

Conclusion and Implications

Company leadership should continue to monitor FinCEN for new regulations and guidance regarding existing beneficial ownership reporting requirements and those that will be implemented under the Act. Given the potential penalties, regulatory teams also should begin developing internal processes and procedures to prepare for compliance with the Act's requirements. Companies should be on the lookout for proposed regulations under the Act and be prepared to comment on them either directly, through trade associations, or thorough their legal counsel since the implications of this reporting mechanism can be quite burdensome for companies, such as those that establish special purpose entities not exempt under the Act or that set up U.S. entities, such as a holding company, and have complex ownership structures

RELATED INDUSTRIES + PRACTICES

- [Corporate Transparency Act](#)
- [Financial Services](#)