

New York's LLC Transparency Law Takes Effect January 1, 2026

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Effective January 1, 2026, New York's LLC Transparency Act imposing beneficial ownership reporting on New York LLCs and foreign LLCs authorized to do business in New York goes into effect.

Despite the interim final rule (IFR) issued by the Financial Crimes Enforcement Network (FinCEN) in March 2025 revising the definition of "reporting company" for purposes of the federal Corporate Transparency Act (CTA) exempting entities formed under the laws of a U.S. state or tribal authority from reporting under the CTA, the New York Limited Liability Company Transparency Act (NYLLCTA) survives and will go into effect on January 1, 2026. The NYLLCTA applies to both limited liability companies (LLC) formed in the state of New York or LLCs formed in any other state (foreign LLCs) that are registered to do business in the state of New York. As a result, LLCs formed under New York law or registered to do business in New York (each a "reporting company") must file either the required beneficial ownership information (BOI) disclosure report or an attestation of exemption with the New York Department of State (DOS) on a form to be adopted by the DOS.

LLCs existing or registered to do business in New York before January 1, 2026, have until January 1, 2027, to file the required signed attestation claiming an exemption or provide the required BOI. LLCs formed or registered to do business in New York on or after January 1, 2026, will have 30 days from the date of formation or registration as a foreign LLC to file a signed attestation of exemption or file a BOI information report with the DOS. Unfortunately, the DOS has not, as of this date, issued any required forms or detailed filing guidance, nor has the required database been established.

For nonexempt reporting companies, the BOI disclosure must identify each of its applicants and "beneficial owners" and report such individuals' full legal name, date of birth, current home or business street address, and a unique identifying number from a valid government-issued identification document. Unfortunately, under the NYLLCTA, FinCEN identifier numbers may not be used to replace BOI for applicants or beneficial owners for DOS filings.

The NYLLCTA originally incorporated the definitions of "reporting company," "exempt company," and "beneficial owner" as well as the exemptions under the federal CTA. Unfortunately, with FinCEN's adoption of the IFR in March 2025 changing the definitions of "domestic reporting company" and "reporting company" to exclude entities created in the U.S. from BOI reporting requirements under the CTA, it remains unclear how the changed CTA definitions and the IFR provisions affecting beneficial owners will affect filings and claims of exemption under the NYLLCTA.

While both houses of the New York Legislature have passed an amendment to the NYLLCTA (SB S8432) to make these terms no longer dependent on the CTA's definitions, or FinCEN's rules, regulations, or guidance, it is important to note that even if SB S8432 is signed into law, filings will still be required with the DOS. Although both houses of the New York Legislature have passed SB S8432 to decouple the NYLLCTA's definitions from the CTA and FinCEN guidance, enactment of SB S8432 would not eliminate filing obligations; filings with the New York Department of State would still be required. This includes annual filings with the DOS by each reporting company required to file BOI reports, and by each exempt company under the NYLLCTA attesting to the applicable exemption, if any, that it asserts applies to it, as well as prompt filings whenever changes in status or changes in beneficial ownership occur. When signed by the governor, SB S8432 will add its own definitions and exemptions for NYLLCTA purposes. Hopefully, the DOS' forms, database, regulations, and guidance (when issued) will clarify some inconsistencies in the NYLLCTA even after SB S8432 goes into effect and will provide guidance to filers.

LLCs that fail to file either the initial BOI report with the DOS or the annual updates or attestations within 30 days from the applicable deadline will be marked as "past due" on the DOS's records. Failures that are not cured within two years from the applicable filing deadline will result in the LLC being marked on the DOS's records as "delinquent." In addition to initial penalties of \$250 for failures to file or late filings, there may also be fines of \$500 for each day the LLC is past due or delinquent in its filings. Further, it is unclear if LLCs that are past due or delinquent in their filings will be deemed as "not being in good standing" by banks, lenders, opinion givers, opinion recipients and their counsel, licensing boards, and not being eligible for a good standing certificate from the DOS, NY Education Department, or other agencies (or if any issued certificate will indicate "past due" or "delinquent) or if the LLC may be deemed barred from bidding for or performing New York state or local government contracts whether or not a standing certificate is issued. The New York attorney general may also bring an action to suspend, cancel, or dissolve a domestic or foreign LLC for prolonged failures to file. The DOS may take similar action under the NYLLCTA with respect to delinquent reporting companies or exempt companies.

Troutman Pepper Locke continues to monitor updates affecting the CTA and the NYLLCTA and advises clients on compliance matters. Companies should review the exemptions and, if not exempt, determine their reporting obligations, establish internal compliance processes, and stay updated on any additional guidance provided by FinCEN or the DOS. If you have questions or concerns regarding how the NYLLCTA may impact your reporting practices or obligations, please reach out to the authors or your primary Troutman Pepper Locke contact.

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