

# **The Corporate Transparency Act (CTA): An Overview**

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# What is the CTA?

The CTA was passed by Congress on January 1, 2021 as part of the Anti-Money Laundering Act of 2020. The purpose of the CTA is to prevent illicit activity, including the use of shell and front companies to obfuscate ownership and launder money.

## Which Companies are Subject to the Reporting Requirements?

Generally, all entities (including foreign companies) that are formed or registered to do business in the United States by filing a document with a secretary of state or similar office (i.e., corporations, LLCs, LLPs) under the laws of a state or Indian tribe are deemed, as a threshold matter, to be “reporting companies” and therefore subject to CTA’s reporting requirements unless an exemption applies.

## Which Companies are Exempted from the Reporting Requirements?

There are currently twenty-three types of entities that are exempted from the CTA’s reporting requirements. Some of the most notable exemptions include the following:

- Companies deemed “large operating companies” that meet all of the following requirements:
  - (i) employ more than 20 full-time employees in the U.S.,
  - (ii) have an operating presence at a physical location in the U.S.,
  - (iii) filed in the previous year an income tax return demonstrating more than \$5,000,000 in gross receipts or sales



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- Subsidiaries that are controlled or wholly owned, whether directly or indirectly, by one or more exempt entities
  - Public companies; insurance companies; banks and credit unions; SEC registered investment advisors, securities brokers and dealers, registered public accounting firms, governmental entities, certain tax-exempt 501(c) and other tax-exempt entities, and other entities already subject to regulatory oversight and beneficial ownership reporting

## What Information Must be Reported?

A reporting company that does not meet the requirements for an exemption is required to disclose the following information:

- Information on the Reporting Company: Full legal name, any trade names, business address within the US, jurisdiction of formation, the IRS taxpayer identification number or foreign equivalent.
- Information on Reporting Company Applicants and Beneficial Owners: Full legal name, date of birth, business address (only for company applicants who form or register the entity in the course of their business) or residential address, a unique identifying number from, and an image of, a passport, driver's license or similar identification document. Note that information on company applicants need not be reported for reporting companies established prior to January 1, 2024.

## Who are Beneficial Owners?

A beneficial owner is any individual who, directly or indirectly, owns or controls at least 25% of ownership interests in the reporting company or exercises substantial control over the reporting company. The concept of ownership is quite broad and encompasses virtually any arrangement by which a person could be viewed as having a current or potential future direct or beneficial ownership interest in a reporting company. Likewise, the concept of substantial control is very broad and may include senior officers, board members, or any other person who has substantial influence on important company decisions, including indirectly through contracts, business or financial arrangements or understandings.

## Who are Company Applicants?

A company applicant is an individual who directly files the entity formation or registration documents with a secretary of state or similar office under the law of a State or Indian tribe, or any individual who is primarily responsible for directing or controlling such filing.



# What are the Filing Deadlines?

## Initial Report

- For non-exempt reporting companies created or registered prior to January 1, 2024, an initial report must be filed by no later than January 1, 2025.
- For reporting companies created or registered on or after January 1, 2024 but before January 1, 2025, an initial report must be filed within 90 calendar days after the registration becomes effective.
- For reporting companies created or registered on or after January 1, 2025, an initial report must be filed within 30 calendar days after the registration becomes effective.

## Corrections

- Reporting companies are generally required to correct any inaccuracies in reports within thirty (30) calendar days after the date on which the reporting company becomes aware or has reason to know that any required information in a report filed with FinCEN is inaccurate.

## Updates

- Any changes to information previously submitted to FinCEN concerning a reporting company or its beneficial owners (other than dissolution), must be reported within 30 calendar days of when the change occurred.

# How Do You Report?

Non-exempt reporting companies are required to file electronically through the FinCEN BOI E-Filing System available on FinCEN's website: (<https://boiefiling.fincen.gov/>).

While the BOI E-Filing System is relatively user friendly, it is anticipated that many companies will engage a third party corporate service provider to prepare and file the reports.

# How Is the Reported Information Utilized?

The information reported under the CTA is not publicly accessible and may only be accessed by a statutorily defined group of governmental authorities and financial institutions, i.e., for use in furtherance of national security, intelligence, or law enforcement activities.

# What are the Penalties for Non-Compliance?

In addition to civil penalties up to \$500 per day, the CTA and rules provide for criminal penalties of up to \$10,000 and/or imprisonment of up to 2 years for any person who willfully provides false beneficial ownership information or fails to report complete or updated information to FinCEN. Notably, these penalties may extend to individuals causing a reporting company's failure to report or update information and senior officers of a reporting company at the time reporting failure occurs.



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**This document is intended to provide you with a high-level introductory overview of the CTA.**

**This overview is not a substitute for and should not be construed as legal advice. The information contained in this overview is provided as general guidance only and may not be sufficient to make a final determination about your company's compliance requirements under the CTA and the rules. Please do not hesitate to contact your Miller Canfield attorney if you need any additional assistance with the CTA.**