

# The Corporate Transparency Act

How Does this Law Affect You?

By Carolyn Ohlsen & Oliver Rolfe

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## HOW DOES THIS LAW AFFECT YOU?

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**By Carolyn Ohlsen, Managing Partner & Oliver Rolfe, Law Clerk  
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In January 2021, the Corporate Transparency Act (“CTA”) was enacted as part of the National Defense Authorization Act in response to concerns surrounding the illicit use of shell companies to fund illegal purposes. The CTA imposes a new reporting requirement which impacts many business entities. Certain businesses must now report Beneficial Ownership Information to the U.S. Department of Treasury’s Financial Crimes Enforcement Network (FinCEN). Thanks to recent guidance from FinCEN, many questions regarding the reporting requirements and exemptions have now been answered.

Given the wide-reaching implications of the CTA and the potential penalties for noncompliance, we encourage you to contact us for specific advice regarding compliance with the new CTA reporting requirements.

### When does this start?

The CTA’s reporting portal opened on January 1, 2024. This law is retroactive and applies to all entities regardless of when they were established, absent limited exemptions.

### Who Is Affected by the CTA’s new Reporting Requirements?

The CTA imposes these reporting requirements on Reporting Companies. There are two types of Reporting Companies:

- Domestic Reporting Company: any entity created by filing a document with any U.S. Secretary of State (Corporation, LLC, LLP, etc.), and
- Foreign reporting Company: entities registered to do business in United States which are formed in a foreign country.

### When must I file a report?

The timeframes for reporting are straightforward and dependent on when your entity was established:

- For entities created before January 1, 2024, the Initial BOI report must be submitted by December 31, 2024.
- For entities created during 2024, the Initial BOI report must be submitted within 90 days of the entity’s creation.
- For entities created after December 31, 2024, the Initial BOI report must be submitted within 30 days of the entity’s creation.

## How often must I file a report?

Annual reports to FinCEN are not required. Instead, the CTA report is a one-time requirement that only needs to be re-filed in the event of a change in previously reported Information. If there is a Change in Beneficial Ownership Information or Company Information you must file an amended report within 30 days of the change.

- Changes requiring an amended report could include a Beneficial Owner obtaining a new driver's license with a changed name, address, or identifying number.
- Reporting Companies should ensure they retain adequate records to keep up to date reports.

## What is required to be reported?

A report has three components: Beneficial Ownership Information, Company Information, and Company Applicant Information (if applicable).

## What is Beneficial Ownership Information?

Information must be reported for Beneficial Owners, who are individuals that directly or indirectly exercise substantial control over the company or own at least 25% of the company.

- Substantial control is broadly defined and may come from being a senior officer, having authority to appoint or remove officers or directors, or make important decisions.
- Beneficial Owners include individuals who own or control entities through Trusts.
- Exceptions to this rule do apply in limited circumstances.

Required Reporting information for Beneficial Owners includes legal name, date of birth, residential address, an identifying number from government identification (Driver's License or Passport), and a photocopy of the identification.

## What is Company Information?

Most companies are required to file a report with FinCEN, however the law includes exemptions for financial and investment businesses which fall within an already monitored and regulated space. While each category is subject to its own set of requirements and rules, the following types of entities are not required to submit CTA reports:

- Securities reporting issuer, governmental authority, bank, credit union, depository institution holding company, money services business, broker or dealer in securities, securities exchange or clearing house, Exchange Act registered entity, investment company or investment advisor, venture capital fund advisor, insurance company, state-licensed insurance producer, Commodity Exchange Act registered entity, accounting firm, public utility, financial market utility, pooled investment vehicle, tax-exempt entity, entity assisting tax-exempt entity, large operating company, subsidiary of certain exempt entities, or an inactive entity.

## Are there penalties for noncompliance?

Civil penalties for violations of the reporting requirements begin at \$500 for each day the violation continues. Additional criminal penalties may be imposed and include up to two years imprisonment and a fine of up to \$10,000. Violations include willfully failing to file a report, willfully failing to correct or update a report, or willfully filing false information.

- Persons or entities that refuse to provide required information to a Reporting Company are subject to penalties.

Required Reporting information for Reporting Companies includes legal name of entity, trade names (if any), address of principal place of business, jurisdiction of formation/registration, and Taxpayer Identification Number.

### What is Company Applicant Information?

The requirement to report a Company Applicant is only for entities established after January 1, 2024. The following are considered Company Applicants subject to the reporting requirement:

- Direct Filer: the individual who directly filed the founding document which created the company, and
- Person who Directs or Controls Filing: the individual who was primarily responsible for directing or controlling the filing, even if that person did not file the document with the state.

Required Reporting information for Company Applicants includes legal name, date of birth, applicant address, an identifying number from government identification (Driver's License or Passport), and a photocopy of the identification.

We hope this brief summary has been helpful. Please note that the summary above is general and is not legal advice for any individual situation. The rules surrounding CTA compliance are complex. Please contact us for advice tailored to you.

LOWENHAUPT & CHASNOFF, LLC  
ATTORNEYS AT LAW

For more information about Lowenhaupt & Chasnoff, please visit [lowenchas.com](https://www.lowenchas.com) or call 314.241.5950.