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## Services

[Business, Corporate & Securities](#)

## Corporate Transparency Act Update: More Time to File Initial Reports and FinCEN Publishes Reporting Guidance

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Ready or not, here comes the Corporate Transparency Act (“CTA”)! On New Year’s Day, January 1, 2024, an estimated 32.6 million private companies will also “welcome in” the new reporting requirements of the CTA. However, for many of these companies, this new federal legislation will prove more burdensome than welcome as it carries significant civil and criminal penalties for non-compliance.

To try to ease this burden and assist the small business community in complying with the CTA’s beneficial ownership information (“BOI”) reporting rule, the Treasury Department’s Financial Crimes Enforcement Network (“FinCEN”) recently published a Small Entity Compliance Guide (the “Guide,” linked [here](#)). However, at 56 pages long and replete with flow charts, the Guide gives a sense of just how burdensome compliance will be.

In another important development, on September 27, 2023, FinCEN proposed [an amendment](#) to the [final rule](#) that would extend the deadline for initial reports by reporting companies formed in 2024 from 30 days after formation to 90 days. It is anticipated that this rule will become effective in November or December, in advance of the January 1, 2024 effective date. This welcome relief will give reporting companies more time to better understand these new obligations and collect the necessary information. Note that reporting companies formed in 2025 or later will still have only 30 days to file their initial reports.

### Reporting Requirements Refresher

As more fully described in our previous articles on all things CTA (linked [here](#), [here](#), [here](#), and [here](#)), any entity classified as a “reporting company” must submit an initial report to FinCEN detailing information about the company itself and two categories of individuals: (i) all “beneficial owners” of the company, and (ii) any “company applicant.” (Company applicant information is not required, however, for companies formed or first registered to do business in the U.S. before January 1, 2024.) As noted above, these initial reports are due within 30 days of formation (extended to 90 days for reporting companies organized in 2024).

Generally, a “reporting company” is any LLC, corporation, or other entity formed by filing a document with a state’s secretary of state (or other similar office) that does not fall within one of the CTA’s 23 specific exceptions. Notable exemptions include regulated entities that already disclose significant information about themselves (e.g., SEC reporting issuers, broker-dealers, banks, credit unions,

insurance companies, etc.) and “large operating companies,” which are limited to companies meeting *all three* of the following criteria: (1) employ more than 20 employees on a full-time basis (i.e., at least 30 hours per week or 130 hours per month) in the U.S.; (2) have filed U.S. federal income tax returns in the previous year demonstrating more than \$5,000,000 in gross receipts or sales in the aggregate; and (3) have an operating presence at a physical office within the U.S.

Each reporting company's initial FinCEN report will include sensitive, personal identifiable information (“PII”) about the company's beneficial owner(s) and company applicant(s), including each individual's legal name, date of birth, current residential address (or business address for a company applicant), a unique identifying number from a current passport, driver's license, etc., and an image of the document. If there is any change to previously reported information about the reporting company itself or its beneficial owners, companies must file an updated BOI report with FinCEN within 30 days.

### Small Entity Compliance Guide

The Guide does not supplement or modify any obligations imposed by the CTA. Rather, it is intended to help small entities understand and navigate the beneficial ownership information reporting rule by communicating information about the reporting requirements in plain language. Importantly, Section 1 of the Guide begins with a step-by-step analysis to help business owners determine (i) if their company is a “reporting company,” or (ii) if their company is exempt from the reporting requirements.

For business owners who determine their company is, in fact, subject to the CTA's reporting requirements, the Guide then walks through several foundational CTA questions, including:

- Does my company have to report its beneficial owners?
- Who is a beneficial owner of my company?
- Does my company have to report its company applicants?
- What specific information does my company need to report?
- When and how should my company file its initial BOI report?
- What if there are changes to or inaccuracies in reported information?

The Guide not only has a chapter focused on each key question above, but each chapter also includes interactive flowcharts, checklists, and other aids to help companies determine whether they have to file a BOI report with FinCEN, and, if so, how to comply with such reporting requirements.

### FinCEN Identifiers

FinCEN just issued a [notice and request for comment](#) describing the application by which individuals can obtain a “FinCEN Identifier.” Beginning January 1, 2024, individuals may provide their personally identifiable information (“PII”) directly to FinCEN on a one-time basis and receive a FinCEN Identifier. Reporting companies under the CTA can use FinCEN Identifiers for their company applicants and beneficial owners in lieu of reporting detailed PII for these persons. Reporting companies would be well advised to require beneficial owners to obtain FinCEN identifiers. This not only will help protect the privacy and PII of beneficial owners but also will shift the responsibility for updating information away from the reporting company to the beneficial owners themselves.

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**What Next?**

Now is the time for companies to determine (i) if they will be classified as a reporting company and required to file an initial FinCEN report, and, if so, (ii) who qualifies as a beneficial owner of the company. While the Guide is a good starting point and useful tool for companies to consult when considering how the CTA will impact their businesses, questions about exemptions from reporting and who qualifies as a beneficial owner can be difficult to answer, and the penalties for non-compliance are steep.

Kutak Rock can help clients navigate the CTA compliance process. If you have any questions about how the CTA will affect your business, please contact your Kutak Rock attorney or one of the attorneys in Kutak Rock's Scottsdale Corporate and Securities Group listed on the left. You may also visit us at [www.kutakrock.com](http://www.kutakrock.com).

