

# Corporate Transparency Act Countdown: Six Months to Beneficial Ownership Reporting

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Beginning January 1, 2024, the beneficial ownership reporting requirements set forth in the Corporate Transparency Act (the “**Act**”), and the related regulations adopted by the U.S. Treasury’s Financial Crimes Enforcement Network (“**FinCEN**”), take effect.

Each “reporting company” formed on or after January 1, 2024 will have 30 days from the date of formation to file an initial report with identifying information about itself and its beneficial owners as well as company applicants, while reporting companies formed before January 1, 2024 will have until January 1, 2025. Once the initial report has been filed, both existing and new reporting companies must update their reports within 30 days of a change.

## Which Companies Are “Reporting Companies”?

All domestic non-exempt corporations, limited liability companies, limited partnerships, and other entities created by registering with a secretary of state or similar office — “reporting companies” — will be required to report their ultimate beneficial ownership. Foreign entities registered to do business in the United States are also reporting companies under the final regulations.

However, exemptions are available for certain businesses that are already heavily regulated or otherwise subject to significant reporting requirements, such as banks, publicly traded companies, broker-dealers, and public accounting firms. In addition, large operating companies that have an operating presence at a physical office in the United States, \$5 million in gross receipts or sales on their previous year’s federal tax return, and over 20 full-time employees are exempt from these reporting requirements.

## What Information Must Be Reported?

A reporting company must provide FinCEN with the following identifying information:

- The reporting company’s (i) full legal name, (ii) trade names and DBAs; (iii) business address; (iv) jurisdiction of formation; and (v) federal tax identification number;
- Each beneficial owner’s and company applicant’s (i) full legal name, (ii) date of birth, (iii) current residential or, in certain cases, business street address, and (iv) unique identifying number from an acceptable identification document (e.g., a driver’s license or passport) and a copy of such identification document.

Beneficial owners and company applicants who are concerned about providing this detailed information directly to a reporting company will have the ability to obtain a FinCEN identifier directly from FinCEN, which a reporting company can then include on its report in lieu of the above information.

## Who is a Beneficial Owner?

A “beneficial owner” includes any individual who directly or indirectly:

- owns or controls at least 25% of the ownership interests of the company (which includes not just traditional equity interests, but also options, profits interests, and debt instruments secured by an ownership interest);
- serves as a senior officer of a reporting company (*i.e.*, presidents, chief financial officers, general counsels, chief executive officers, chief operating officers, and other officers who perform similar functions);
- has authority over the appointment or removal of any senior officer or dominant majority of the board of directors (or similar governing body) of a reporting company;
- has direction, determination, or substantial influence over important matters of a reporting company; or
- holds any other form of substantial control over the reporting company.

In tiered entity structures, reporting companies will need to look through upper-tier entities to determine the individuals who ultimately own or have control over the company — other entities cannot be listed as beneficial owners.

## **Who is a Company Applicant?**

A “company applicant” is (i) the person who directly files the entity’s formation documents as well as (ii) the person primarily responsible for directing or controlling the filing. This expansive definition may include the person acting as the reporting company’s organizer or incorporator, legal professionals who prepared the underlying formation documents, and corporate service providers who submit the formation documents for filing. However, a reporting company is only required to report up to two company applicants.

## **What Should You Be Doing Now?**

Over the next few months, companies should determine whether they will qualify as a reporting company or if an exemption is available. Non-exempt companies who will be required to report beneficial ownership should begin to review their organizational documents and update them as necessary to require that beneficial owners provide identifying information as needed. Reporting companies should also develop official CTA compliance and related policies to ensure that any changes to beneficial ownership are reported accurately and timely.

If you have questions about the CTA and its impact on your organization, please contact the individuals listed below.