

TAP TO READ

2023 UPDATE

HOW THE CORPORATE TRANSPARENCY ACT COULD IMPACT YOUR BUSINESS

By Matt Beardmore

Up until now, there has not been a federal requirement to report the names of the people who own or control businesses formed in the United States. As a result, it has made it more challenging for law enforcement to identify and prosecute those who use shell and front companies to evade taxes, finance terrorism, launder money, and participate in other criminal activity.

The hope is that this will change as the reporting requirements in the Corporate Transparency Act (CTA) of 2019 are scheduled to take effect at the start of 2024.

Part of the Anti-Money Laundering Act of 2020, the CTA became law on Jan. 1, 2021, when the U.S. Congress overrode a presidential veto of the National Defense Authorization Act for Fiscal Year 2021. The CTA "requires certain types of U.S. and foreign entities to report information about their beneficial owners to the Treasury

Department's Financial Crimes Enforcement Network, commonly known as FinCEN."

According to FinCEN, there are two types of reporting companies that will be required to report their beneficial ownership information (BOI): 1) domestic reporting companies, such as corporations, LLCs, and other entities that were formed by filing a document with a secretary of state; and 2) foreign reporting companies, LLCs, or entities formed under the law of a foreign country that are "registered to do business in any U.S. state or in any Tribal jurisdiction, by the filing of a document with a secretary of state or any similar office under the law of a U.S. state or Indian tribe."

There are 23 categories of entities, such as certain banks and regulated public utilities, that would be exempt from the CTA's reporting requirement.



Michael Tomlinson
Tomlinson & Shapiro, P.C.

"Who the beneficial owners are can be tricky," said attorney Michael Tomlinson, shareholder at Chicago-based Tomlinson & Shapiro, P.C. "If you have a layered entity structure with a parent company and subsidiaries that are not wholly owned, one of

the companies may qualify for an exemption, but another may not. We have several clients who are in that boat and we have already started the process of going through and looking at several layers."

BOI to be reported to FinCEN would include, among other information, the name, date of birth, and residential or business address of each beneficial owner.

Contents of the reports will only be accessible to "authorized government authorities, financial institutions, and other authorized users," and FinCEN is developing a Beneficial Ownership Secure System (BOSS) to "receive, store, and maintain BOI" that "will be secured to a Federal Information Security Management Act 'High' compliance level." However, there are still privacy concerns about the CTA.

"In the EU and UK, they have much more robust reporting of information than we do here and a lot more of it is publicly available," Tomlinson said, "but we are still not comfortable with it or

used to it in the U.S. We're used to a certain level of anonymity."

There is also a push in the U.S. Congress to extend the reporting deadlines. Currently, reporting companies in existence prior to Jan. 1, 2024, will have until Jan. 1, 2025, to file



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their BOI to FinCEN, while companies formed on or after Jan. 1, 2024, will have 30 days to comply.

If U.S. H.R. 5119 – a bi-partisan bill introduced in the U.S. House of Representatives on August 1, 2023 – becomes law, existing companies would have an additional year to file to BOSS, while companies formed on Jan. 1, 2024, or later would have 90 days to report their BOI.

Whether or not the CTA is altered in any way, Tomlinson recommends businesses seek counsel to learn more about what their obligations could be under the Act.

"There's nothing saying this bill couldn't be passed in some modified form," Tomlinson said. "We will be proactive with our clients – our firm has our own form that we are going to require clients fill out with information by February 2024 so we can have everything ready for that 2025 deadline."



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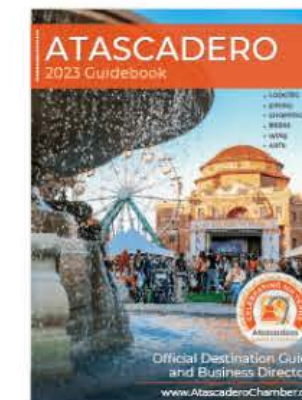


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