

The Corporate Transparency Act: New Reporting and Compliance Obligations for Business Clients

Legal Alert
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As you may be aware, the Corporate Transparency Act (the “**CTA**”) is a new federal law that requires most U.S.-based companies, including corporations, partnerships and limited liability companies, to report information regarding their “beneficial owners” to the federal government through the Financial Crimes Enforcement Network (“**FinCEN**”) and a new FinCEN IT system known as the Beneficial Ownership Secure System (“**BOSS**”). The intent of the CTA and the reporting to FinCEN is to combat money laundering, tax fraud and other illegal activities.

The CTA reporting requirements will become effective on January 1, 2024 for any companies formed on or after that date. Companies formed prior to January 1, 2024 have until January 1, 2025 to report.

Basic Reporting Requirements

Reporting Companies. The CTA requires that any domestic entity created by, or any foreign entity registered to do business in any state, and which is not exempt (as discussed below) (each such nonexempt entity, a “**Reporting Company**”) must provide the following information to BOSS:

- (a) the Reporting Company’s full legal name;
 - (b) any trade or D/B/A names;
 - (c) street address for the Reporting Company’s principal place of business;
 - (d) the jurisdiction of formation;
 - (e) the taxpayer identification number issued by the IRS;
- and

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- (f) information regarding Beneficial Owners and Company Applicants.

Beneficial Owners. A “**Beneficial Owner**” is an individual who directly or indirectly (a) exercises substantial control over the Reporting Company or (b) owns or controls, directly or indirectly, at least twenty-five percent (25%) of the ownership interests of such Reporting Company. An individual is deemed to be a Beneficial Owner by virtue of exercising substantial control over a Reporting Company where such individual: (i) serves as a senior officer; (ii) has authority to appoint or remove a senior officer or a majority of the board of directors (or similar body); and/or (iii) otherwise directs, determines, or has substantial influence over important decisions made by the Reporting Company.

A Reporting Company must provide the following information regarding Beneficial Owners:

- (a) the Beneficial Owner’s full legal name;
- (b) date of birth;
- (c) residential street address; and
- (d) a copy of a photo identification document (non-expired passport, driver’s license, etc.).

Beneficial Owners may be able to obtain a unique “FinCEN identifier.” Thereafter, a Reporting Company would need to only provide to BOSS that Beneficial Owner’s FinCEN identifier on future reports rather than the foregoing four pieces of information.

Company Applicants. A “**Company Applicant**” is: (i) the individual who files the document creating the Reporting Company (e.g., a certificate of formation) or (ii) the individual primarily responsible for directing or controlling the filing. Up to two individuals may be a “Company Applicant” for each Reporting Company filing to BOSS. Companies formed prior to January 1, 2024 do not need to report Company Applicant information.

Required reporting information for Company Applicant(s) mirrors the information required from a Beneficial Owner, except that a Company Applicant doing such work as part of his or her employment would report the Company Applicant’s place of business rather than a personal residential street address.

Exemptions from CTA Obligations

The CTA contains numerous exemptions from its reporting requirements—some common and some esoteric. Some of the more common exemptions are for publicly traded companies and “large operating businesses” (20 or more full-time employees in the United States with an operating presence in a physical office in the United States and more than \$5 million in annual gross revenue in the previous year), certain investment vehicles, tax-exempt entities (e.g., 501

(c) organizations), accounting firms, banks and credit unions.

Entities that do not require the filing of a document with the Secretary of State in connection with its formation, such as most general partnerships, and common trusts, are not subject to the CTA.

This list is only a brief survey of the CTA's many enumerated exemptions. If you have questions about whether one or more of the exemptions under the CTA applies to your Reporting Company, please contact a member of the Foster Garvey CTA Team (described below).

Timelines, Duty to Update, Penalties

For Reporting Companies formed on or after January 1, 2024, beneficial owner reports must be filed with BOSS within 30 days of formation of the Reporting Company.

For Reporting Companies formed before January 1, 2024, beneficial owner reports must be filed with BOSS by no later than January 1, 2025. In other words, companies formed before January 1, 2024 have one year to comply with the CTA's reporting obligations.

Reporting Companies have an ongoing duty to provide updated beneficial owner reports within 30 days if there is a change to previously reported information (e.g., a Beneficial Owner moves and has a new residential street address) or if it becomes aware of a previous report that contained inaccurate information. This duty to update is enforced by the CTA's broad dictate that “[i]t shall be unlawful for any person to willfully provide, or attempt to provide, false or fraudulent beneficial ownership information . . . or to willfully fail to report complete or updated beneficial ownership information to FinCEN”

At a minimum, therefore, cautious actors should assume that the duty to update applies not only to the Reporting Companies themselves but also to Beneficial Owners. Although FinCEN's guidance states that it “does not expect that an inadvertent mistake” would be a “willfully false or fraudulent violation of the CTA,” civil and criminal penalties may apply to individuals who cause such violations or are senior officers of the Reporting Company at the time of such violations.

Access to BOSS Database

Many governmental agencies and financial institutions will have access to the BOSS database in connection with criminal investigations and regulatory compliance. Such access raises concerns, including, among other things, security breaches, unauthorized disclosures, and potential discrepancies among related filings by a Reporting Company (e.g., tax returns). The Foster Garvey CTA Team is monitoring developments and additional guidance addressing these issues.

Next Steps

Foster Garvey clients will be impacted by the CTA and its new reporting requirements. To prepare, Foster Garvey recommends that its clients: (i) familiarize themselves with the reporting obligations of the CTA, including any exemptions that may apply; (ii) establish internal protocols and procedures for collecting beneficial ownership information for and reporting updates to BOSS when such information changes; and (iii) reach out to counsel and/or members of the Foster Garvey CTA Team to address any questions or concerns.

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Foster Garvey's CTA Team is comprised of lawyers [Larry Brant](#) (Tax, Portland), [Hillary Hughes](#) (Business, New York), [Bryan Helfer](#) (Real Estate, Seattle), [Dan Youngblut](#) (Finance/Corporate, Seattle), [Aaron Frishman](#) (Trusts & Estates, Portland), and [Francesca Garcia](#) (Corporate Paralegal, Portland). The Foster Garvey CTA Team is monitoring the federal government's ongoing guidance regarding both the interpretation and implementation of the CTA and the BOSS database, and is developing guidelines and best practices for what Foster Garvey can do to assist clients with their obligations to comply with the CTA.

We recognize that you may have questions regarding the CTA. Please do not hesitate to reach out to a member of the Foster Garvey CTA Team to discuss any issues relating to the CTA.