

Key Wealth Institute

What You Need to Know About the Corporate Transparency Act

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Millions of small companies, people with estate plans, and property owners will have to report personal information to the Financial Crimes Enforcement Network (FinCEN) by 2025.

The Corporate Transparency Act (CTA) was enacted as part of the 2021 National Defense Act. The CTA mandates that millions of entities in the U.S. report their beneficial ownership information (BOI) to the Treasury Department's FinCEN.

The legislation will affect many people who have undertaken estate planning, asset protection planning, own real estate, and more. The reporting will feel invasive and compliance will take time and expense. Many will feel uncomfortable disclosing this information.

The CTA's goal is to create a comprehensive, searchable, national database of entities. The objective is to pierce through the entity and identify who is behind it. This is part of a worldwide effort to combat criminal activities including tax evasion, money laundering, and other financial crimes. This reporting has grown common in other countries. However, it is new to the U.S. and represents an effort to get the U.S. on par with the reporting standards of other countries.

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Who Is Required to Report?

All domestic and foreign entities that have filed formation or registration documents with a U.S. state (or Indian Tribe), unless they meet one of 23 exceptions. Exemptions include:

- Operating entities that meet all the following criteria:
 - Employ 20 or more people in the U.S.
 - Had gross revenue (or sales) over \$5 million on the prior year's tax return
 - Have a physical office in the U.S.
- Publicly traded companies that have registered under section 102 of the Sarbanes-Oxley Act
- Charities
- Certain types of entities such as banks that already are subject to significant government regulation

Comment

This will include limited liability companies (LLCs), corporations (both C and S corporations), limited partnerships (LPs and family limited partnerships), and other closely held entities. Many people who engage in estate planning or asset protection planning routinely create entities that will be subject to CTA reporting.

Investment holding companies and business and rental properties that are held by separate entities for asset protection purposes (even disregarded entities that are not required to file a federal income tax return) may be subject to CTA reporting. Those that have LLCs that facilitate the management of assets and transfer planning are also affected. It doesn't matter whether the entity has no (or virtually no) receipts. There is no exemption for very small entities, even if there is no gross income.

Also, note that the CTA filing does not apply to trusts, because they can be formed without any state law filing.



When Must Companies File?

- New entities created/registered in 2024 must file within 90 days after receiving actual or public notice, whichever is earlier, of their company's creation or registration.
- Existing entities (created/registered before January 1, 2024) must file by January 1, 2025.
- New entities registered on or after January 1, 2025, must file within 30 days.
- Reporting companies that have changes to previously reported information or discover inaccuracies in previously filed reports must file within 30 days.

Comment

There is an initial reporting requirement as well as ongoing reporting requirements if there is a change. It won't be easy to remember that a change must be reported within 30 days. For example, if one of the beneficial owners moves to a new home, that will have to be reported within 30 days. You will need to ensure individuals know to inform you of such changes so that the required filings are made.

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What Information Must Companies Report?

- Each company must report the following information:
 - Full legal name of the reporting company and any trade or doing-business-as names
 - U.S. business address for the principal place of business (a street address, not a P.O. box, lawyer's, or other advisor's address)
 - State or Tribal jurisdiction of formation or registration
 - IRS taxpayer identification number (for a disregarded single member LLC, this may be the Social Security number of the owner)
 - An identifying document from an issuing jurisdiction, such as a certificate of incorporation, and the image of that document
- In addition, each company must report the following details on its beneficial owners, and for newly created entities, its company applicant(s):
 - Name
 - Birth date
 - Home address (a street address, not a P.O. box, lawyer's, or other advisor's address)
 - Unique identifying number and issuing jurisdiction from an acceptable identification document (an image of the document that includes a photograph of the individual)

Comment

This is sensitive, confidential, and personal information that goes well beyond any information reported on an income tax return in the past.

Who is a Beneficial Owner?

- Any individual who, directly or indirectly, either:
 - Exercises substantial control over a reporting company
 - Owns or controls at least 25% of the ownership interests of a reporting company

Comment

All officers are beneficial owners by default, even those who own no equity in the entity. A trust can be a beneficial owner. It may be the trustee of a trust. But questions still arise about whether an investment trustee or trust protector is deemed a control person. It depends on the actual powers given to that particular individual. We will look for more clarity as we move closer to the effective date.

Who Is a Company Applicant?

- The individual who files the document that creates the entity or who first registers the company to do business in the U.S.
- The individual primarily responsible for directing or controlling the filing of such document

What Are the Penalties for Noncompliance?

Intentionally providing false or fraudulent information to FinCEN or failing to complete or update information can result in the following penalties for individuals, companies, or both:

- Civil penalties up to \$500 per day that a violation continues
- Criminal penalties including a \$10,000 fine and/or up to two years' imprisonment

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Who Will Have Access to Your Data?

The information stored with FinCEN will not be available to the public, even through Freedom of Information requests. The current proposal by FinCEN limits access to:

- U.S. federal, state, local, and Tribal government agencies for national security or criminal and civil investigations
- Foreign law enforcement agencies or officers
- Financial institutions using BOI to investigate money laundering activities.
- Federal functional regulators and other appropriate regulatory agencies
- The Treasury for official duties

What Can You Do Now?

Although the rules did not apply until January 1, 2024, and initial reports are not due until January 1, 2025, you may want to start compiling this information now, since it may take time to accumulate. Begin identifying reporting entities and beneficial owners and gathering information to prepare the eventual reporting requirements.

Compile a list of every entity you own or are involved with, and have your advisor review the reporting implications for that list of entities. You will need to work with your attorney, CPA, and other advisors to compile this list. Maintain records of every entity you determine that you either do or do not have to report, and why, for future use.

For more information, please contact your advisor.

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About the Author

In her role, Tina Myers is responsible for managing the Central Planning Team and overseeing the National Advisory Committee and any financial planning content distributed. She works with our Regional Planning Strategists to help facilitate our best thinking and advice delivery to clients.

Before joining Key, Tina worked in the public accounting industry, where she focused on taxes, specifically individual, trust, estate, and gift tax planning. She also held roles at a small public accounting firm, a regional firm, and the private client group of a large multi-national firm.

Tina earned an M.Tax from Virginia Commonwealth University and holds several industry-standard licensures. She received the Circle of Excellence Award for Key Private Bank in 2016 and 2018.



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