

September 13, 2023

THE CORPORATE TRANSPARENCY ACT | A BRIEF PRIMER

The Corporate Transparency Act (“CTA”) comes into effect on January 1, 2024. It is the most sweeping corporate transparency law in decades and will have a major impact on how most businesses in the U.S. operate. The purpose of the law is to crack down on “shell companies” used in illegal operations like terrorism financing, money laundering, tax evasion, and sanctions violations. To do this, and for the first time in U.S. history, the CTA will create a federal database of the ultimate owners (termed “beneficial owners”) of many businesses and other organizations in the U.S. This database will be maintained by the Financial Crimes Enforcement Network (“FinCEN”) which is a part of the Department of Treasury.

Required Reporting Information for Beneficial Owners

Each entity that is subject to the CTA is deemed a “reporting company.” The definition of a reporting company will generally encompass any entity that is formed by making a filing with a Secretary of State’s (or similar organization’s) office. Corporations, limited liability companies, limited partnerships, and limited liability partnerships, are all examples of reporting companies. Each reporting company that does not qualify for an exemption will be required to provide FinCEN with the following information for the beneficial owners that either: (i) exercise “substantial control” over the entity, or (ii) own or control 25% or more of its ownership interests

1. Full legal name of the individual
2. Date of birth
3. Current residential street address
4. Unique identifying number from a passport, state identification, or driver’s license
5. Image of the individual’s passport, state identification, or driver’s license

In addition, reporting companies will need to provide information about the company itself and the individual(s) who formed the company. Individuals will also have the option to obtain a unique FinCEN identifier (which requires a one-time disclosure of the above information), which they can use in lieu of providing their personal information to FinCEN every time they are listed in a report.

The database maintained by FinCEN is *not* publicly accessible, but it will be available to U.S. and international law enforcement agencies, among others.

New entities formed after January 1, 2024 will have 90 days from the date of formation to provide this information to FinCEN. Note that this decreases to 30 days starting in 2025. Entities that existed prior to January 1, 2024, will have until **January 1, 2025**, to comply with the CTA. If any report a company has filed with FinCEN becomes inaccurate – for example, due to a change in the beneficial owners – the reporting company is required to provide an updated report with FinCEN within 30 days.

Exemptions to the Reporting Requirements

Importantly, the CTA provides a list of more than 20 exemptions to the reporting requirements. These are entities that are excluded from the definition of a “reporting company”. Exemptions include: publicly-traded companies, companies that operate in highly-regulated industries (e.g. broker-dealers, banks, and insurance companies), certain tax-exempt entities, certain inactive entities, and “large reporting companies”. The large reporting company exemption will be particularly important for many businesses. A large reporting company is a company that meets **ALL** of the following criteria:

1. Employs 20 or more employees on a full-time basis in the U.S.
2. Files an income tax return in the previous year demonstrating more than \$5 million in gross receipts, and
3. Has an operating presence at a physical office within the U.S.

Penalties

The CTA is not optional, and noncompliance is not to be taken lightly. Failure to comply can result in a fine of \$500 per day (up to a maximum of \$10,000 *per violation*) and up to two years imprisonment.

JAH Can Help

The Corporate Transparency Act will have a major impact on many companies. The experienced **corporate attorneys** at JAH are available to counsel you throughout the new guidelines, ensuring that your business is protected. **Click here to contact** a member of our **Corporate Group** if you are in need of assistance.

This update is a short primer on the CTA. A more thorough analysis of the CTA will follow in the coming weeks.

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