



## The Corporate Transparency Act—What it Means for Companies

On January 1, 2021, the U.S. Congress overrode the President’s December 23 veto of H.R. 6395, the National Defense Authorization Act. Embedded in the 1,480-page bill as Division F Anti Money Laundering is The Corporate Transparency Act (CTA), which includes beneficial ownership reporting requirements for new and existing companies.

The specifics of the beneficial owner reporting requirements will be contained in regulations to be issued by the U.S. Department of Treasury within one year of the bill’s effective date. Nevertheless, it is not too soon for those who may be subject to the CTA’s requirements to start planning so they ready for compliance when the law takes effect.

The purpose of this article is to provide a high-level overview of the reporting requirements of the CTA, identify who must comply with the new law and the timetable for compliance. It is important to note that many of the compliance details depend on Treasury Department regulations required by the CTA.

### Overview

At the request of law enforcement and other stakeholders, in 2006 Congress began to introduce bills intended to provide more transparency into company ownership. It took more than a decade, but Congress was finally able to pass the CTA, which requires companies to report beneficial ownership information directly to the Financial Crimes Enforcement Network (FinCen), a bureau within the Treasury Department.

### Scope of the Corporate Transparency Act

The new CTA requirements apply to corporations, limited liability companies, and other entities that fall within the CTA’s definition of “reporting company.” Among the many exclusions from being named a reporting company are: publicly traded companies; insurance companies; broker-dealers; entities that (i) have 20 or more full time employees in the U.S., (ii) filed an income tax return in the previous year with at least \$5 million in gross receipts or sales, (iii) have an operating presence or physical office within the U.S.; and any entity owned or controlled by one of the foregoing. Applicants also must report the same information as beneficial owners. An applicant is an individual who files an application with a state or Indian tribe to form an entity or registers an entity formed under the laws of a foreign country to do business in the U.S. by filing a document with the secretary of state or similar office of a state or Indian tribe.

### Reporting requirements

The deadlines for reporting beneficial ownership information to FinCen depend on the effective date of the rules adopted by the Treasury Department pursuant to the CTA. Any reporting company formed or registered prior to the effective date of the rules must submit beneficial ownership information to FinCen within two years of that date. The rule-making process could take up to a year so existing companies might have until January, 2024 to comply with beneficial ownership information reporting requirements.



Reporting companies formed or registered after the effective date of the Treasury Department rules must submit beneficial ownership information at the time of formation or registration.

If the information provided to FinCen changes at a later date, the reporting company will need to submit an update with the added or changed information within one year of the information changing.

### **Required beneficial ownership information**

A reporting company must provide the following information to FinCen for each beneficial owner and applicant: (i) full legal name; (ii) date of birth; (iii) current, as of the date of report, residential or business street address; and (iv) unique identifying number from an acceptable identification document that is specified in the CTA or a FinCen identifier number (more on FinCen identifiers will be forthcoming at a future date). Acceptable identification documents will include (i) a non-expired U.S. passport; (ii) a non-expired identification document issued by a state, local government or Indian tribe; (iii) a non-expired driver's license issued by a state; or (iv) if the individual lacks all of the foregoing documents, a non-expired foreign passport.

### **Companies exempt from reporting requirements**

The CTA exempts numerous types of companies from the reporting requirements. The exempt companies tend to have one thing in common—most are already subject to federal or state regulation. For example, financial institutions have to be registered with various government regulators and are subject to oversight. The same applies to companies registered with the Securities and Exchange Commission, state insurance regulators and companies that operate in regulated industries, such as utilities. In these cases, the regulators would already have access to the company beneficial owner information.

### **Confidentiality of beneficial ownership information**

Beneficial ownership information collected by FinCen under the CTA may not be disclosed by any government officer or financial institution given access to it. FinCen may only disclose beneficial ownership information in response to requests from government law enforcement, prosecutors, the courts, and national security agencies. Financial institutions may have access to the information for due diligence purposes with consent of the reporting company. In some cases, the information may be disclosed if requested by a federal agency to assist the law enforcement, courts, prosecutors, or judges of a foreign country. Unauthorized disclosure of beneficial ownership information is a crime punishable by up to five years imprisonment and a \$250,000 fine.

### **Conclusion**

It will be at least a year before the new beneficial ownership reporting requirements take effect. A number of details about the process are still to be determined and must be clarified by the Treasury Department through the rule-making process. Expect to hear much more from CSC on this new law as it develops over the coming weeks and months. In the meantime, for more information, please contact your CSC sales or service representative, or send us an email at [corpservices@cscglobal.com](mailto:corpservices@cscglobal.com).