

# THE CORPORATE TRANSPARENCY ACT

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## What is the CTA?

The CTA (31 USC § 5336; 31 CFR 1010) is intended to strengthen the federal government's anti-money laundering efforts by requiring many business entities to report information regarding beneficial ownership of companies.

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## When does the CTA take effect?

Reporting requirements take effect **January 1, 2024**:

- Reporting companies existing (or if foreign, registered in the US) prior to January 1, 2024, will have until January 1, 2025, to submit initial reports.
- Reporting companies created on or after January 1, 2024, must submit an initial report to FinCEN within 90 calendar days of formation or registration.

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## Who needs to file?

Unless one of the exemptions applies, any corporation, limited liability company, or other “similar entity” that is created (or registered) by the filing of a document with a secretary of state or a similar office is referred to as a “reporting company.” **Most small businesses, fund manager entities, real estate holding entities, or entities created for estate planning purposes, such as family limited partnerships, will be reporting companies.** There is some ambiguity with respect to trusts, but certain trusts, such as Delaware Statutory Trusts, will almost certainly be subject to reporting. For each entity that is a reporting company, it will need to provide information as to:

- The entity itself.
- Certain beneficial owners – anyone who owns 25% or more of the entity, and **anyone who exercises “substantial control” over the entity** (officers, general counsel, directors, LLC managers, certain trustees, control persons of general partner entities, etc.)
- In the case where a paralegal files directly with a state to form an entity, both the paralegal and the attorney handling or supervising the matter will be the company applicant. For entities formed through service companies such as CSC or CT after January 1, 2024, the service company will be the company applicant – the person who **directly** files formation or registration papers to create the entity, along with the individual who “directs or controls the filing action.”

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## Who does not need to file?

There are **23 exemptions** from the requirements of the CTA. “Large operating companies” are exempt from filing. A “large operating company” is defined as an entity that employs **more than 20 full-time employees** (as defined under IRS regs) in the U.S.; (ii) has an **operating presence at a physical address in the U.S.** (i.e., a shared workspace or just a physical address is not enough); and (iii) filed a federal income tax return for the previous year demonstrating more than **\$5 million in gross receipts or sales**.

Certain entities subject to other federal or state regulation (such as financial institutions, insurance companies, and companies registered with SEC) also do not need to file (regardless of whether they meet the large companies test). Entities owned or controlled by an exempt entity (i.e., subsidiaries) are also exempt.

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## What needs to be filed?

The reporting company is required to provide certain information concerning the entity, its beneficial owner(s), and its company applicant(s) (depending on when the entity was formed). **The reporting company is responsible for all information included in the filing, including beneficial owner and company applicant information.**

- Reporting Company: The reporting company is required to provide its full legal name, any D/B/As, principal office, jurisdiction, and EIN.
- Beneficial Owner(s): The reporting company is required to provide, for each beneficial owner, the beneficial owner’s full legal name, date of birth, current residential address, a unique identifying number from an acceptable identification document (a non-expired passport, driver’s license, or similar document), and a copy of the identification document.
- Company Applicant(s): For reporting companies **formed on or after January 1, 2024**, the reporting company for each applicant is required to provide essentially the same information as for beneficial owners. Companies have an obligation to update information within 30 days of change (excluding company applicants). For reporting companies **already in existence on January 1, 2024**, the reporting company does not need to include company applicant information in its initial reports.

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## What are the penalties for non-compliance?

Penalties for failure to timely file can result in a fine of **\$500 for each day the violation continues**. Criminal violations may be punished by up to **two years imprisonment and a \$10,000 fine**.

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