

CLIENT ALERT

# Preparing for the Corporate Transparency Act Reporting Requirements

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## AUTHORS

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New federal reporting requirements are currently scheduled to go into effect in 2024 for limited liability companies and other state-formed entities. *Are you prepared to comply?* We advise that you start reviewing now what limited liability companies, partnerships and corporations your family or any family trusts own or control, even if they do not hold significant assets.

Under the Corporate Transparency Act (the “CTA”) and implementing regulations administered by the Treasury Department’s Financial Crimes Enforcement Network (“FinCEN”), domestic corporations, limited liability companies and other entities created by the filing of an organizational document with state officials will have to file a report providing information on the entity and its beneficial owners with FinCEN.<sup>1</sup> The reporting requirement also applies to foreign entities registered to do business in the United States. While there are certain exemptions from these filing requirements, they primarily apply to large operating companies, tax-exempt entities and other entities already subject to significant oversight. The exemption from filing for small or inactive entities is limited to inactive companies formed prior to 2020 that have no foreign owners, have not had a change in ownership or sent or received more than \$1,000 in the prior year and otherwise hold no assets. While trusts are mostly excluded from direct reporting requirements because they are not generally created

<sup>1</sup> See prior Client Alerts on the CTA at:

<https://www.willkie.com/-/media/files/publications/2022/fincenfinalizesruleonbeneficialownershipreportingr.pdf>;

<https://www.willkie.com/-/media/files/publications/2022/fincenpublishesfirstofthreeproposedrulesonbenefici.pdf>;

<https://www.willkie.com/-/media/files/publications/2021/01/antimoneylaunderingactof2020.pdf>.

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by the filing of an organizational document with state officials, a limited liability company or other state-formed entity owned by a trust will not be exempt from reporting on that basis.

As it currently stands, entities created on or after January 1, 2024 will have thirty days from the date of formation to file a report. Entities created before that date must file a report by January 1, 2025. While FinCEN has not yet finalized the reporting form and has requested certain extensions in the filing deadlines<sup>2</sup> (and there have been legal challenges to the CTA itself), we want our clients to be prepared to comply with the law on day one.

Based on the final regulations promulgated in September 2022, reporting entities should be prepared to submit the following information on each beneficial owner: full legal name, date of birth, address and identification number from an acceptable identification document (such as a driver's license or passport), along with an image of such document. A beneficial owner is an individual who directly or indirectly exercises substantial control over the reporting entity or owns or controls at least 25% of its ownership interests. With respect to an entity owned by a trust, the beneficial owners will generally be the trustees and any other individuals with the power to dispose of trust assets; they may also include a beneficiary or settlor in some circumstances.<sup>3</sup>

A beneficial owner who does not wish to provide his or her personal information to the reporting entity will be able to provide such information directly to FinCEN, which will issue the owner an identification number to provide to the reporting entity. (Detailed information on the application process for obtaining a FinCEN identifier has not yet been released.) Reporting entities formed on or after January 1, 2024 will also have to provide information on the person who formed the entity. Once the initial report is filed, additional reports will need to be filed any time reportable information changes (including the contact information for a beneficial owner). The potential penalties for willfully failing to timely file a report or filing a false report include civil fines of \$500 per day for the period of noncompliance and criminal penalties of up to \$10,000 and/or two years of imprisonment.

While it is not expected that entities will be able to submit reports prior to January 1, 2024, we recommend that you take time now to identify and gather information for any entities created by or for you, or in which you have an interest, that will need to file a report. Please reach out to us if you would like assistance in determining whether you have any such entities.

There is also proposed legislation in New York State called the New York LLC Transparency Act (the "NY Act") that would require the disclosure of similar beneficial ownership information for most LLCs formed in or registered to do business in New York. The key difference between the CTA and the NY Act is that the NY Act would establish a publicly searchable

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<sup>2</sup> See <https://www.fincen.gov/news/news-releases/fincen-issues-notice-proposed-rulemaking-extend-deadline-certain-companies-file>.

<sup>3</sup> More information, including the text of the law and regulations, as well as the recently published "Small Entity Compliance Guide," is available at <https://www.fincen.gov/boi>.

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database containing beneficial ownership information, whereas information required under the CTA will not be made publicly available.

If you have any questions regarding this client alert, please contact the following attorneys or the Willkie attorney with whom you regularly work.

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