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## **“Corporate Transparency Act”**

### **1- WHAT IS THE CORPORATE TRANSPARENCY ACT AND WHAT DOES IT MEAN FOR BUSINESS AND INCORPORATORS?**

Businesses and incorporators will be faced with the Corporate Transparency Act (CTA), which is contained within the National Defense Authorization Act and is designed to take actions against illegal activities conducted through anonymous shell companies by requiring the reporting of the identity of the “beneficial owners” of companies (subject to certain exceptions).

Under the CTA, businesses will need to disclose the “beneficial owners” information to the Financial Crime Enforcement Network (FinCEN) at the time of the formation of the company and during the annual filings, including if there have been any changes made during the prior year.

### **2- WHAT INFORMATION IS REQUIRED TO BE REPORTED AND WHEN?**

The information that must be reported is information regarding the “beneficial owners” of the company. A “beneficial owner” is a natural person who:

- exercises substantial control over a company;
- owns 25% or more of the equity interests of a company; or
- receives substantial economic benefits from the assets of a company.

#### **Reporting at the time of formation:**

At the time of formation, the company must file a list of its beneficial owners with FinCEN. The list must include the same information that financial institutions are required to collect under FinCEN’s Customer Due Diligence rule. This is, for each beneficial owner:

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- the full legal name;
  - date of birth;
  - current residential or business address; and
  - a current identifying number (e.g., driver's license or passport number).

The “applicant,” is also required to provide his/her information, even if he or she is not a beneficial owner. This means that lawyers, accountants, and others who form reporting companies for clients will be required to report their personal information. To protect themselves, and avoid legal problems in the future, applicants will want to “know-their-clients” before forming companies on their behalf.

### **Reporting while filing the Annual Report:**

An Annual Report must be filled with FinCEN every year. The company must report a current list of its beneficial owners as well as a list of any changes in the beneficial ownership that occurred during the previous year.

### **3- STATE NOTIFICATION REQUIREMENT:**

It would be mandatory for the states to inform any applicant seeking to form a company of the obligations to report the information regarding the “beneficial owners”.

### **4- WHO MUST REPORT?**

The type of entities required to report are corporations, limited liability companies, or other similar entities that are—

- created by the filing of a document with a secretary of state or a similar office under the law of a state or Indian Tribe; or
- formed under the law of a foreign country and registered to do business in the United States by the filing of a document with a secretary of state or a similar office under the laws of a state or Indian Tribe.

There are a few companies exempted from reporting information, for example, the most significant exception is the one for active businesses. A company will not be required to report the information stated in the CTA if the entity:

- employs more than 20 employees on a full-time basis in the United States;

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- filed in the previous year Federal income tax returns in the United States demonstrating more than \$5,000,000 in gross receipts or sales in the aggregate, including the receipts or sales of—
    - other entities owned by the entity; and
    - other entities through which the entity operates; and
  - has an operating presence at a physical office within the United States.

While this exception may not exclude small businesses, it will exclude many active businesses from the requirement to annually report beneficial owners to FinCEN. Among the other types of entities that are exempt from reporting are:

- public companies under the Securities Exchange Act of 1934;
- churches, charities, nonprofit entities, and any other entity that qualifies for tax-exempt status under sections 501(a), 527, or 4947(a)(1) of the Internal Revenue Code; and
- other companies that already have certain reporting obligations to governmental entities (e.g., insurance companies, banks, federal or state credit unions, investment companies under the Investment Company Act of 1940, registered public accounting firms, and public utilities).

All applicants pursuing to form an entity that is exempt from filing the beneficial ownership information, must file a written certification with FinCEN identifying the specific applicable exemption, while providing the applicant's information at the same time. Existing entities that qualify for an exemption have 2 years from the date that the final regulations are issued by Treasury to file the required certification with FinCEN stating that it is exempt.

## 5- WHEN WILL THE CTA BECOME AVAILABLE?

**\*\*\*The CTA will not become effective until Treasury issues regulations, which may not happen until late this year. This will give the business community time to study the CTA, consult with their lawyers, and determine how best to comply.**

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## 6- WHAT IS THE PENALTY FOR FAILING TO REPORT THE INFORMATION?

It is unlawful under the CTA to:

- knowingly file false beneficial ownership information to FinCEN; or
- willfully failing to provide complete or updated beneficial ownership information to FinCEN.

Violations are subject to a civil penalty of not more than **\$10,000, or criminal penalties** under title 18 of the U.S. Code, which can include fines and imprisonment for not more than 3 years. Fortunately, the CTA explicitly states that negligent violations are not penalized. Moreover, a waiver process is provided for violations that are due to reasonable cause and not due to willful neglect, which is modeled on the Internal Revenue Service waiver process for companies' SS-4 filings. Penalties are also provided for unauthorized disclosures or misuse of beneficial owner.

## 7- HOW CAN CORPAG ASSIST FULLFILING THE REQUIREMENTS?

CORPAG can gladly assist with the required filings with FinCEN once the CTA becomes effective.

### **\*\*Disclaimer of No Legal Advice Intended\*\***

**The contents of this memo are intended to convey general information only and not to provide legal advice or opinions. The contents of this memo, and the posting and viewing of the information in this memo, should not be construed as, and should not be relied upon for, legal or tax advice in any particular circumstance or fact situation. No action should be taken in reliance on the information contained in this memo. An attorney should be contacted for advice on specific legal issues.**

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**References:**

[H.R.2513 - 116th Congress \(2019-2020\): Corporate Transparency Act of 2019 | Congress.gov | Library of Congress](#)

[Congress Enacts the Corporate Transparency Act \(natlawreview.com\)](#)

[FACT Sheet: A Brief Summary of The Corporate Transparency Act \(Title LXIV of the NDAA, H.R. 6395\) | The FACT Coalition](#)