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Ready or Not, Here It Comes: Final Countdown to the CTA

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The Corporate Transparency Act (CTA) is federal legislation that went into effect on January 1, 2024. The CTA was enacted by Congress to combat money laundering and other financial crimes by requiring a broad range of companies to disclose information about their owners and others who can influence control over the business. The CTA imposes new reporting requirements that will impact millions of businesses in the United States—any entity that is not exempt from CTA's requirements (Reporting Company)¹ will be obligated to file a report containing Beneficial Ownership Information (BOI) with the Financial Crimes Enforcement Network (FinCEN), a bureau of the Department of Treasury.

No longer will businesses in the United States be able to organize and operate anonymously. As the name implies, the CTA now requires “transparency” from state-registered business entities and eliminates the privacy previously enjoyed by most companies, their senior management and ownership.²

Reporting Companies existing prior to January 1, 2024 will have **until January 1, 2025** to file their initial BOI report with FinCEN.³ In other words, the final countdown has started for these companies—**only 90 days** remain for Reporting Companies that have not yet completed an initial BOI Report and complied with the new law to do so.

Importantly, the requirements of the CTA require something more than just a “one-and-done” filing. The CTA requires a Reporting Company to **timely** file updates of changes in BOI for so long as the Reporting Company still exists.⁴ All companies should evaluate their corporate governance structures to determine compliance with the CTA and ensure there are protocols and compliance processes in place for obtaining information as well as filing and updating required reports.⁵

It is incumbent upon executive officers, general counsel and leadership of **all** companies (large and small) to review the CTA and understand its implications. This includes understanding that **civil and criminal penalties** may be imposed due to a failure to comply or a willful submission of incorrect or incomplete information to FinCEN.

Companies should perform an analysis of compliance and reporting requirements for all entities within their structure. Some of the questions about the CTA that companies simply need to understand include the following:

- Who is required to report?

- Who is exempt?
- Who is a “beneficial owner”?
- What information must be reported? ⁶
- When are BOI reports due?
- What updates to internal protocols and documentation are necessary to ensure CTA-compliance?

There are a handful of federal court cases pending challenging the constitutionality of the CTA, with at least one court finding the new law unconstitutional with respect to the specific plaintiffs in that case.⁷ These cases continue to wind their way through the courts, including appeals, with little prospect of definitive resolution prior to the impending reporting deadline that is quickly approaching at year end. Federal legislative and regulatory efforts are also underway to potentially address various aspects of the CTA, but it is unclear which (if any) changes will be implemented. In addition, FinCEN continues to issue new interpretive guidance at times that may change or update previous understandings of CTA's requirements, and such uncertainty (to be sure) presents challenges to companies trying to comply.

The implications of the CTA are significant and go beyond Reporting Company compliance. Banks, investment firms, financial advisors, counsel engaged in M&A activities (among others) that perform due diligence and render advisory services in connection with financing and acquisition transactions should take note of the potential implications (and penalties) for non-compliance with the CTA's requirements.⁸ As one example, when initiating an M&A transaction, enhanced due diligence should be performed to determine whether the CTA applies, identify any potentially applicable exemptions, and ensure compliance with the CTA throughout the transaction. Buyers should confirm that the target has maintained CTA compliance by requesting its filings in due diligence and should consider the implications of the CTA when negotiating representations, warranties, closing conditions and indemnification.

The clock is ticking on most Reporting Companies—a very real deadline is approaching for existing businesses that have not already complied with CTA's requirements and do not qualify for one of the CTA's narrow exemptions.⁹ All companies should evaluate the impact of the CTA on their businesses and, if necessary, implement protocols for addressing initial and ongoing compliance. The time to act is now!

¹ A “Reporting Company” under the CTA is a classification covering millions of businesses organized in the United States (and foreign businesses registered to conduct business in the United States). <https://www.hollandhart.com/the-corporate-transparency-act-isnt-dead-yet>

² Timothy Crisp, *Goodbye Shareholder Anonymity, Hello Transparency*.

³ Any Reporting Company formed or registered between January 1, 2024 and December 31, 2024 is required to file its initial BOI report within 90

days of notice of formation or registration. Any Reporting Company formed or registered on or after January 1, 2025 is required to report its BOI to FinCEN within 30 days of formation or registration.

⁴ The CTA imposes a duty to update existing filings within 30 days of any changes to information reported earlier. A full and irrevocable dissolution of the Reporting Company, which depends on applicable state law, is required before the Reporting Company is no longer required to update its BOI reports under the CTA.

⁵ Compliance may require a Reporting Company to obtain information from its beneficial owners.

⁶ J. Marcus Painter, *The CTA Is Here. Are You Ready? Do You Know Your Duties?*; Timothy Crisp, *Continuing Reporting Obligations Under the Corporate Transparency Act: You're Never Done*.

⁷ George H. Singer, *The Corporate Transparency Act Isn't Dead Yet*

⁸ George H. Singer, *Corporate Transparency Act Takeaways for Banking Industry*

⁹ J. Marcus Painter, *Corporate Transparency Act Deadlines Loom: Are you Ready?*

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