

# What You Need to Know About the Corporate Transparency Act

Insights

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Beginning on January 1, 2024, many businesses will be required to report their ownership and management information to the U.S. Department of Treasury under the Corporate Transparency Act (“CTA”). While many health care entities are exempt from the CTA’s reporting requirements, others will need to start preparing for compliance.

The CTA is intended to help prevent money laundering, corruption, fraud, and other illicit activity through greater transparency of ownership information in specific types of companies. On September 30, 2022, the Financial Crimes Enforcement Network (“**FinCEN**”) published a final rule that implements the CTA’s beneficial ownership information (“**BOI**”) reporting requirements (as amended, “**Reporting Rule**”). Failure to comply with the Reporting Rule could result in civil or criminal penalties.

## Which Companies Need to Report

The Reporting Rule applies to two broad categories of companies (which the CTA defines as “**reporting companies**”): (1) domestic reporting companies or (2) foreign reporting companies.

- A “**domestic reporting company**” is a corporation, a limited liability company, or any entity created by the filing of a document with a secretary of state or any similar office under state law or law of an Indian tribe. A domestic entity such as a statutory trust, business trust, or foundation is required to report only if it was created by filing a document with a secretary of state or similar office.
- A “**foreign reporting company**” is a corporation, a limited liability company, or other entity which is formed under the law of a foreign country and is registered to do business in any state or tribal jurisdiction in the United States by filing a document with a secretary of state or similar office.

## Exceptions to Reporting Requirements

The reporting requirements [exempt twenty-three types of entities](#). Of these, the most applicable exemptions for the health care industry are likely the following:

- investment companies or investment advisers;
- venture capital fund advisers;
- tax-exempt entities;
- entities assisting a tax-exempt entity;
- subsidiaries of certain exempt entities; and

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- large operating companies<sup>[1]</sup>.

The exception for large companies means the CTA will primarily affect small to medium sized companies with fewer than 20 full-time employees, such as medical groups, digital health start-ups, ambulatory surgery centers, and independent practice associations. Additionally, health care organizations utilizing a friendly PC model, particularly those operating in states which enforce the corporate practice of medicine doctrine, should carefully consider the Reporting Rule's implications on management services organizations ("MSOs") and whether the MSO should be considered a "beneficial owner" (as defined below).

### Reporting Requirements

The Reporting Rule requires companies to identify their **"beneficial owners."** "Beneficial owners" are individuals who either directly or indirectly:

- (1) exercise "substantial control" over the company, or
- (2) own or control at least 25% of the company's ownership interests.

Under the Reporting Rule, an individual exercises "substantial control" if:

- the individual is a senior officer (the company's president, chief financial officer, general counsel, chief executive officer, chief operating officer, or any other officer who performs a similar function);
- the individual has authority to appoint or remove certain officers or a majority of directors (or similar body) of the company;
- the individual is an important decision-maker for the company (as determined under FinCEN guidance); or
- the individual has any other form of substantial control over the company as provided by FinCEN ( e., a catch-all).

In addition to identifying their beneficial owners, companies must report the company name, address, the place of its formation or registration, and its taxpayer identification number.

### Reporting Deadlines

Non-exempt companies in existence prior to January 1, 2024 will have until January 1, 2025 to file their report. New companies formed on or after January 1, 2024 and before January 1, 2025 have 90 days after their formation becomes effective to submit their initial BOI report. New companies formed on or after January 1, 2025 have 30 days after their formation becomes effective to submit their initial BOI report. If there is any change to the reported information about a company or its beneficial owners, the company must file an updated report no later than 30 calendar days after the change.

To prepare for these reporting deadlines, businesses should determine whether they are considered Reporting Companies and if so, they might begin preparing reporting information and consider creating internal policies for gathering this information, if necessary. All organizations should be aware of the reporting requirement and routinely assess if they are or will be required to submit such reports.

### No Public Access to BOI Reports

Note that the BOI will not be made publicly available. Generally, FinCEN will disclose its collected BOI only (i) to government officials for national security, intelligence, and law enforcement purposes; and (ii) with the reporting company's consent, to financial institutions.

### Key Resources:

- FinCEN's [BOI report filing](#) webpage
- FinCEN's [BOI frequently asked questions](#) webpage
- FinCEN's [small business resources](#) webpage

[1] A “large operating company” is defined as a company who, among other requirements, employs more than 20 full-time employees, operates from physical premises in the United States, and has more than \$5,000,000 in annual gross receipts or sales.

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