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## The Corporate Transparency Act is Here: What You Need to Know Now

The Corporate Transparency Act (CTA) has been in effect for four months, and the Financial Crimes Enforcement Network (FinCEN) began accepting beneficial ownership information (BOI) reports on Jan. 1, as planned. There were no last minute injunctions or catastrophic glitches with the FinCEN website,<sup>1</sup> and the rollout appears to have gone relatively smoothly. The FinCEN website is informative and user friendly, and the filing process itself is relatively straightforward, especially for reporting companies with only one or two beneficial owners.

On March 1, a federal district court in the Northern District of Alabama declared the CTA unconstitutional and enjoined the government from enforcing the CTA against the plaintiffs in that action, which include members of the National Small Business Association as of March 1. A notice of appeal was filed by the government on March 11. In the meantime, the CTA remains applicable to all other reporting companies, which are still required to file BOI reports as provided in FinCEN's regulations. Two other lawsuits have been filed in Maine and Michigan and also challenge the CTA's constitutionality, and Sen. Tommy Tuberville, R-Alabama, has vowed to introduce legislation to overturn the CTA in its entirety.

As a refresher, the CTA requires many different types of business entities to report their beneficial ownership information to FinCEN. Reporting companies include corporations, LLCs, limited partnerships and other entities created by the filing of a document with a secretary of state or similar office. There are 23 exemptions, most of which exempt reporting for highly regulated industries (e.g., financial services). A few other notable exemptions are tax-exempt entities, large operating companies, publicly traded companies and inactive entities. Reporting companies in existence before Jan. 1, 2024, must file an initial report by Jan. 1, 2025. Reporting companies created on or after Jan. 1, 2024, and before Jan. 1, 2025, must file an initial report within 90 calendar days of formation. Beneficial owners are the individuals who ultimately own or control the reporting company. They include anyone who is a

senior officer or owns at least 25% of a reporting company, directly or indirectly, or has any other form of substantial control over the reporting company.

FinCEN continues to issue new guidance regarding the BOI reporting process. The most recent update to its BOI Frequently Asked Questions (FAQs),<sup>2</sup> issued on April 18, consists of 14 newly issued FAQs and two updated FAQs on topics including the status and beneficial ownership of homeowners associations, beneficial ownership through trusts and corporate trustees, fluctuations in the size of a reporting company and how beneficial ownership information may be accessed by authorized recipients.

One of the biggest challenges for law firms is making sure clients are aware of the new reporting requirements and assisting clients with the filing process. Most accounting firms and financial advisors are not handling CTA work and are instead often advising clients to consult with their attorneys, since determining who the beneficial owners are for reporting companies with complex ownership structures can require careful legal analysis. Managing CTA work with clients is an evolving process, given the legal challenges to the CTA itself and the responsibility associated with making and updating BOI filings, and law firms will need to continue to develop robust CTA protocols to ensure compliance and manage risk.

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## NOTES

1. <https://www.fincen.gov/boi>.
2. <https://www.fincen.gov/boi-faqs>.

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