



Navigating the Corporate Transparency Act: Implications for Small and Large Law Firms

The **Corporate Transparency Act** (“**CTA**”) - Congress’s most recent effort to combat money laundering and other financial crimes - will go into effect on January 1, 2024. The Act requires certain entities to report their “**beneficial ownership**” information to the Financial Crimes Enforcement Network (FinCEN), a bureau of the U.S. Department of Treasury.

The CTA’s beneficial ownership reporting requirement will apply to many law firms and their clients. This article explains the beneficial ownership reporting requirement and which law firms may be exempted from the requirement, examines compliance considerations and procedures, and provides sources for more helpful information about the CTA.

What is the Corporate Transparency Act (CTA)?

The primary purpose of the CTA is to address the misuse of shell companies for illegal purposes. Its primary aim is to enhance transparency and combat money laundering, terrorism financing, and tax fraud facilitated using shell corporate structures.

The CTA “Beneficial Ownership” Reporting Requirement

The CTA requires companies to disclose their **beneficial owners** when they are formed and, when there are changes, to make updates within thirty days of the changes.

Beneficial owners are individuals who exercise substantial control over or receive substantial economic benefits from a legal entity. This includes individuals who own 25% or more of the entity’s equity interests or have significant managerial control.

Reporting Companies and Entities Exempted from Compliance

Entities that are defined by the CTA as “**Reporting Companies**” must comply with the FinCEN reporting requirement. Reporting Companies under the CTA are broadly defined as any corporation, LLC, or other company that was created by registering with a secretary of state or similar office under the laws of a state (domestic reporting company), or formed under the law of a foreign country and registered to do business in the U.S. by registering with a secretary of state or under the laws of a state (foreign reporting company).

While most law firms will fall under the Reporting Companies definition, the CTA expressly exempts the following entities from compliance:

1. An entity that employs more than 20 employees on a full-time basis in the United States that has
 - filed in the previous year federal income tax returns in the U.S. demonstrating more than \$5,000,000 in gross receipts or sales, and
 - has an operating presence at a physical office within the U.S.;
2. a bank of a federal or state credit union;
3. publicly traded entities;
4. entities subject to reporting requirements with other regulatory bodies such as the Securities and Exchange Commission.

Accordingly, most mid-size and large law firms will likely not be required to file a disclosure under the CTA provided they have more than \$5,000,000 in gross receipts or sales. However, small law firms and solo practitioners will most likely be required to disclose their **“Beneficial Owners”** (again- defined as any individual who either exercises “substantial control” over the reporting company or owns or controls at least 25 percent of the ownership interests of a reporting company, or receives substantial economic benefits from the assets of a corporation or LLC.)

Information To Be Disclosed Under the CTA

If your law firm must make the CTA disclosure, the following information must be disclosed for each **Beneficial Owner** of the firm:

- Full legal name;
- Date of birth;
- Current residential or business address; and
- A unique identifying number from an acceptable identification document (passport, driver’s license, or other government issued identification document.)

Time to Comply

Reporting companies in existence before January 1, 2024 will need to file their initial report with FinCEN by January 1, 2025. A reporting company created on or after

January 1, 2024 will generally need to file its initial report within 30 days of its creation or registration. Furthermore, a previously registered company will be required to update its registration within 30 days of any change in its beneficial ownership.

Although the prospects for its passage are uncertain, there is proposed legislation that would delay the implementation of certain CTA deadlines. The bill would also prohibit a reporting company to avoid submitting beneficial ownership information by asserting an inability to obtain that information.

CTA Compliance Policies and Procedures for Law Firms

Law firms will need to develop policies and procedures to ensure compliance with the CTA, as willful failure to report beneficial ownership information (BOI) within 30 days of formation or willfully providing false or fraudulent BOI information may result in a maximum civil penalty of \$500 per day that the violation continues, and criminal penalties of up to \$10,000, imprisonment for up to two years or both. Law firms may also face liability if they are found to have facilitated non-compliance or failed to report suspicious activity.

Some law firms may see these new reporting requirements as an opportunity to develop new business, while others may see it as too risky, time-consuming, or expensive. Thus, some firms may consider outsourcing the filing of the initial BOI report and ongoing compliance work to a third-party service company or to the client itself.

Additional FinCEN Guidance on the CTA

FinCEN has issued additional guidance to the public. In September 2023, FinCEN released a Small Entity Compliance Guide (available [here](#)) which summarizes the relevant rules and what information needs to be reported. FinCEN has also been periodically updating its list of frequently asked questions on the CTA (available [here](#).)

Conclusion

Smaller law firms or solo practitioners who are not exempt from the beneficial ownership reporting requirement will need to understand their own obligations under the CTA. If you are considering providing client advice or guidance on CTA compliance, you should stay informed to ensure your clients' compliance with this legislation.

This article was prepared by Aaron M. Barham of the New York City-based law firm of Furman Kornfeld & Brennan LLP. Aaron is part of a team of over 40 lawyers and paralegals devoted to the defense of attorneys and other professionals in malpractice and disciplinary matters, as well as the defense of construction and personal-injury accidents. For more information about the above topic or the authors, please visit: www.fkbllaw.com

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