

Memorandum

December 31 Is Coming: Preparing for the CTA's Initial Reporting Deadline for Companies Formed or Registered Prior to 2024

November 7, 2024

The Corporate Transparency Act and its implementing regulations (collectively, the “CTA”)¹ became effective on January 1, 2024. This memorandum focuses on a few key CTA considerations as the end-of-year deadline approaches.

The CTA requires any company formed in or registered to do business in the United States (a “reporting company”) that does not qualify for one of 23 exemptions to submit certain information regarding natural persons who are its “beneficial owners”—which includes 25% or greater beneficial owners, certain senior officers,² and other individuals who otherwise exercise “substantial control” over the reporting company—to the Department of the Treasury’s Financial Crimes Enforcement Network (“FinCEN”) (such reports, “BOI Reports”). Additionally, non-exempt reporting companies formed on or after January 1, 2024, must also report one or two individuals who directly filed or were primarily responsible for the filing of the document that created or registered the company (“company applicants”).³

The deadline for non-exempt reporting companies to submit initial BOI Reports depends on when the entity in question was created or, for foreign reporting companies, first registered to do business in a U.S. state or Tribal jurisdiction:

- Entities formed or registered prior to January 1, 2024 must submit initial BOI Reports no later than December 31, 2024;
- Entities formed or registered in 2024 must submit initial BOI Reports within 90 days of receiving notice of creation or registration; and

¹ 31 U.S.C. § 5336(h)(3); 31 C.F.R. § 1010.380 et seq.

² Specifically, a “senior officer” includes a non-exempt reporting company’s president, chief executive officer, chief financial officer, chief operating officer, general counsel, or any other officer who performs a similar function, but excluding individuals who serve only as a corporate secretary or treasurer.

³ FinCEN has published guidance to assist companies in assessing their compliance obligations under the CTA, including the [Small Entity Compliance Guide](#) and [frequently asked questions](#). Simpson Thacher and other firms who frequently advise clients in the private funds space published a [white paper](#) specifically for the private funds industry.

- Entities formed or registered in 2025 or later must submit initial BOI Reports within 30 days of receiving notice of creation or registration.

Also, as discussed in more detail below, changes to information provided in a BOI Report or to a reporting company's exemption status can trigger reporting obligations.

For groups with large or complex structures with multiple owners, analyzing reporting obligations can be challenging and, in some instances, can require time-consuming coordination among multiple parties. Additionally, while we anticipate that FinCEN's initial CTA-related enforcement efforts will focus on egregious violations, we note that willful failure to comply with the CTA can result in criminal and civil penalties, including monetary fines and even imprisonment.⁴

Spotlight on “Substantial Control”: Identification of beneficial owners who are 25% or greater owners or “senior officers” of a reporting company is a relatively straightforward, entity-specific inquiry, but the identification of individuals otherwise exercising “substantial control” over a reporting company can be more difficult given the breadth of the definition.

- Consistency Considerations: Particularly for corporate groups with large numbers of non-exempt reporting companies, ensuring that reporting companies report beneficial ownership information in a consistent manner may be an important consideration, particularly as relates to “substantial control” persons. Where reasonably appropriate based on the facts, it may be beneficial to take a uniform approach across various levels within a corporate structure. This could entail, for example, identifying certain individuals as exercising substantial control over reporting companies at various levels of the corporate structure. A reporting company should also consider who has been identified as exercising control over the entity in other analogous contexts, such as in non-U.S. anti-money laundering filings, Securities and Exchange Commission or other regulatory filings, and know-your-customer documents, to ensure consistency among these reports.
- Entities Exercising “Substantial Control”: While only natural persons can be “beneficial owners,” to the extent that an entity has any governance or control rights that rise to the level of “substantial control” over a non-exempt reporting company, FinCEN will likely expect BOI Reports to identify at least one natural person who exercises such control on behalf of that entity. In both commentary to the final rule

⁴ 31 U.S.C. § 5336(h)(3).

implementing the CTA and subsequently issued guidance, FinCEN has stated its expectation that each non-exempt reporting company “will always identify at least one beneficial owner under the ‘substantial control’ component, even if all other individuals are subject to an exclusion or fail to satisfy the ‘ownership interests’ component.”⁵

Joint Ventures (“JVs”) and Other Jointly Controlled Entities: Ensuring CTA compliance for entities structured as JVs or where multiple parties have meaningful control rights will require coordination among parties, both to assess whether the entity qualifies for an exemption and, if not, to identify reportable beneficial owners.

- **Subsidiary Exemption:** If a JV or other jointly controlled entity does not itself qualify for an exemption, such as the “large operating company,” “securities reporting issuer,” or “investment company or investment adviser” exemptions, coordination among the parties holding ownership interests is often necessary to determine whether all of the ownership interests are either, directly or indirectly, (a) wholly owned or (b) “entirely control[led]”⁶ by one or more entities that themselves qualify for an exemption, such that the subsidiary exemption may apply.
- **Filing Responsibilities:** If a JV or otherwise jointly controlled entity is determined to be a non-exempt reporting company, such non-exempt reporting company itself, as opposed to the various ownership interest holders, will be responsible for filing the initial BOI Report. However, coordination among holders of ownership interests will be required to ensure that the BOI Report contains all reportable beneficial owners.

Updated BOI Reports: In addition to initial reporting obligations, any change with respect to information previously submitted to FinCEN in a BOI Report triggers an obligation to file an updated report within 30 calendar days of such change. If a non-exempt entity becomes exempt after submitting its initial report, the “newly exempt” entity must file an updated report indicating that the entity is no longer a reporting company within 30 days after the change. Similarly, if an exempt entity loses its exemption, it is required to file an initial report within 30 calendar days after the date that it no longer meets the criteria for any exemption.⁷

No Relief in Sight from Reporting Obligations: Despite various pending litigation efforts challenging the CTA and other efforts to modify or repeal the CTA, at this time, we anticipate that the CTA will remain in effect for the foreseeable future and that clients should plan to make requisite filings by the end of the year. An Alabama District Court’s March 2024 holding in *National Small Business United v. Yellen* that the CTA exceeds the limits

⁵ [Beneficial Ownership Information Reporting Requirements](#), 87 Fed. Reg. 59498, 59525 (Sept. 30, 2022); FinCEN, [Beneficial Ownership Information Frequently Asked Questions](#), FAQ D.13, (last updated October 3, 2024) (the “FinCEN FAQs”).

⁶ FinCEN FAQ L.6.

⁷ Note if an entity created or registered prior to January 1, 2025, were to change from exempt to non-exempt before January 1, 2025, such entity would have until the longer of (1) 30 days after the date on which such change occurs or (2) such entity’s deadline for filing an initial BOI Report.

of Congress' enumerated powers under the Constitution is currently on appeal before the Eleventh Circuit.⁸ The District Court's ruling only enjoins the Treasury Department and FinCEN from enforcing the CTA against the plaintiffs in that case.⁹ Finally, while there have been calls to modify or repeal the CTA, we do not expect any such efforts to come to fruition before the end-of-year reporting deadline for entities formed prior to January 1, 2024.

For further information regarding this memorandum, please contact one of the following authors:

WASHINGTON, D.C.

Abram J. Ellis
+1-202-636-5579
aellis@stblaw.com

Jim Perry
+1-202-636-5717
james.perry@stblaw.com

Claire Cahoon
+1-202-636-5828
claire.cahoon@stblaw.com

NEW YORK CITY

George S. Wang
+1-212-455-2228
gwang@stblaw.com

David H. Caldwell
+1-212-455-2612
dcaldwell@stblaw.com

Daniel S. Levien
+1-212-455-7092
daniel.levien@stblaw.com

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⁸ *National Small Bus. United v. Yellen*, 5:22-cv-01448 (N.D. Ala. 2024); *National Small Bus. United v. U.S. Dep't of the Treasury*, Appeal No. 24-10736 (11th Cir.).

⁹ More recently, in September and October 2024, U.S. District Courts rejected preliminary injunctions in two separate cases challenging the constitutionality of the CTA. *See Cmty. Ass'ns Inst. v. Yellen*, 1:24-cv-01597, 2024 U.S. Dist. LEXIS 193958 (E.D. Va. Oct. 24, 2024) (specifically challenging the CTA as-applied to community associations; notice of appeal to the Fourth Circuit filed November 4, 2024); *Firestone v. Yellen*, 3:24-cv-1034-SI (D. Or. 2024). At least ten other challenges to the CTA are, as of the date of this memorandum, pending in various federal courts. *See Hotze v. Yellen*, 2:24-cv-00210-Z (N.D. Tex., filed Oct. 28, 2024); *Smith v. Yellen*, 6:24-cv-00336 (E.D. Tex., filed Sept. 12, 2024); *Washington v. Yellen*, 6:24-cv-01483 (M.D. Fl., filed Aug. 13, 2024); *Taylor v. Yellen*, 2:24-cv-00527 (D. Ut., filed July 29, 2024); *Tr. of the Lewis Wharf Condo. v. Yellen*, 1:24-cv-11679 (D. Mass, filed June 28, 2024); *Small Bus. Ass'n of Michigan v. Yellen*, 1:24-cv-00314 (W.D. Mich., filed June 26, 2024); *Black Econ. Council of Massachusetts, Inc. v. Yellen*, 1:24-cv-11411 (D. Mass, filed May 29, 2024); *Texas Top Cop Shop, Inc. v. Garland*, 4:24-cv-00478 (E.D. Texas, May 28, 2024); *Boyle v. Yellen*, 2:24-cv-00081 (D. Me., filed Mar. 15, 2024); *Robert J. Gaszaz Co. v. Yellen*, 1:23-cv-02468 (N.D. Ohio, filed Dec. 29, 2023).