



## Preparing for the Federal Corporate Transparency Act: January 1, 2024 Effective Date Looms

As we have discussed in our prior RMF Corporate Law Alert (see [here](#)), the federal Corporate Transparency Act (the “CTA”) became law on January 1, 2021. Effective January 1, 2024 (the “Effective Date”) certain business owners, investors and advisors are required to report direct and indirect, human, beneficial ownership, control, and service provider information to the Financial Crimes Enforcement Network (“FinCEN”) of the U.S. Department of Treasury.

There are seemingly boundless questions that continue to arise as a result of the CTA’s enactment into law. In preparing to comply, RMF has compiled a list of the key questions that have been raised with clients and experts alike, which may be helpful in determining whether your entity is required to prepare a filing with FinCEN, and the means for doing so.

### Frequently Asked Questions:

#### 1. What types of entities are required to comply with the CTA?

Unless an exemption exists, domestic entities that are: (1) corporations; (2) limited liability companies; or (3) created by the filing of a document with a secretary of state or any similar office under the law of a state or Indian tribe, and foreign entities that are: (1) corporations, limited liability companies, or other entities; (2) formed under the law of a foreign country; and (3) registered to do business in any state or Tribal jurisdiction by the filing of a document with a secretary of state or any similar office under the laws of a state or Indian tribe are required to file reports beginning on January 1, 2024.

#### 2. What type of “company” information does the CTA require be reported by a non-exempt reporting company?

Each non-exempt reporting company will have to disclose: (a) its legal name; (b) its trade names, “doing business as” (d/b/a), or “trading as” (t/a) names, if any; (c) its current principal place of business address in the United States (if foreign, its current address where the company conducts business in the United States); (d) its jurisdiction of formation, organization or registration; and (f) its taxpayer identification number.

#### 3. How does the CTA define “beneficial owner”?

According to FinCEN, “beneficial owners” includes any individual who, directly or indirectly, either (1) exercises substantial control over a reporting company, or (2) owns or controls at least twenty five percent (25%) of the ownership interests of a reporting company.

*4. Can a beneficial owner be another entity?*

No. A beneficial owner must be an individual with a direct or indirect interest or who otherwise exercises substantial control over the non-exempt reporting company. If the direct owner of the interest in the reporting entity is another entity (as opposed to an individual), any individual owners of that entity that qualify as “beneficial owners” must have their indirect ownership interest in the reporting company disclosed to FinCEN.

*5. What type of “beneficial owner” information does the CTA require be reported by a non-exempt reporting company?*

Non-exempt reporting companies will be required to disclose the following information for each of its beneficial owners: (a) legal name; (b) date of birth; (c) residential address; and (d) “a unique identifying number and issuing jurisdiction from an acceptable identification document.”

*6. Do any exemptions exist?*

Yes. Exemptions exist for both otherwise qualified beneficial owners, as well as reporting companies.

*7. What are the exemptions from the definition of “beneficial owner”?*

The following individuals are not required to report their information to FinCEN:

1. Minor children, if and only if, the information of that child’s parent or guardian is reported properly;
2. Individuals acting as a nominee, intermediary, custodian, or agent on behalf of another individual;
3. An individual acting solely as an employee of the reporting company who is not a senior officer;
4. An individual whose only interest in an entity is through a right of inheritance; and
5. Certain creditors of the reporting company.

*8. What are the exemptions from the definition of “reporting company”?*

Our prior RMF Corporate Law Alert (see [here](#)) identifies the key exemptions the definition of “reporting company.”

*9. Are foreign entities required to comply with the CTA?*

Yes. Both domestic and foreign entities registered to do business in any state within the United States are required to comply.

*10. Are small businesses required to comply with the CTA?*

Most likely. Given the intent of the law – to provide law enforcement with beneficial ownership information for the purpose of uncovering, preventing and punishing terrorism, money laundering and other misconduct through business entities - the misconception that the scope of the CTA does not impact smaller entities is categorically false. In fact, the CTA carves out for certain “large operating companies” that otherwise meet certain criteria and are subject to alternative reporting requirements, but requires compliance by most, if not all, small to medium sized entities that are conducting business in the United States.

*11. Are trusts required to comply with the CTA?*

In some respects. While most trusts do not qualify as reporting companies under the CTA, trusts that qualify as beneficial owners will be required to disclose certain beneficial ownership information in filings made by reporting companies to FinCEN. Only current beneficiaries that are beneficial owners must comply. As highlighted above, an individual whose interest in a non-exempt reporting company is a future interest through a right of inheritance will not be considered a beneficial owner and thus, even if the future beneficiary of a trust holds a membership interest in a limited liability company of twenty five percent (25%) or more, the individual will not be considered a beneficial owner until such individual's interest vests.

*12. What is the timeline for filing with FinCEN?*

Non-exempt reporting companies in existence on or before January 1, 2024 will have one (1) year from the date of formation or organization to file their initial report with FinCEN. Non-exempt entities formed on or after January 1, 2024, will have thirty days (30) from formation or organization to file their initial report with FinCEN.

*13. Where are filings to be submitted?*

Filings are to be made electronically through an online database to be created and monitored by FinCEN, known as the Beneficial Ownership Secure System ("BOSS"). The portal is expected to become accessible on or before January 1, 2024.

*14. Will the information uploaded to the BOSS portal be accessible to the public?*

No. The BOSS database will not be open to the general public. However, certain government agencies, such as the Department of Treasury and federal national security, intelligence, and law enforcement agencies, as well as certain state and local law enforcement agencies, will have access and will be required to adhere to "appropriate protocols," which includes but is not limited to written requests to FinCEN detailing the intended and limited use of such data, before accessing the BOSS database.

*15. If my entity is in existence now, but is properly dissolved before January 1, 2024, do I have to file a report with FinCEN?*

No. the reporting requirement applies only to entities in existence on or after January 1, 2024.

*16. If my entity is in existence now, but is dissolved after January 1, 2024, do I still have to file a report with FinCEN?*

Yes. The CTA states that all entities in existence on January 1, 2024 must file reports (unless an exemption exists). As mentioned above, if the entity is dissolved before January 1, 2024, there are no CTA reporting requirement for that entity.

*17. Are there any additional reporting requirements for non-exempt reporting companies formed on or after January 1, 2024?*

Yes. In addition to providing information about the company and its beneficial owners, reporting companies organized/formed or registered to do business on or after January 1, 2024, must also identify the “company applicant,” which FinCEN defines as the individual who directly filed the document(s) with the state to create the entity or to register it to do business. If more than one individual was involved in the filing of the document, the individual who was primarily responsible for directing or controlling such filing must also be disclosed.

*18. What happens if certain previously reported company or beneficial ownership information changes?*

All non-exempt reporting companies must submit required updated and/or corrected reports to FinCEN within thirty (30) days of a change in reported information.

*19. What happens if I elect not to, or in the alternative, fail to report some or all information to FinCEN?*

Compliance with the CTA is both mandatory and advisable. The CTA provides for civil fines of \$500.00 per day, up to \$10,000.00, per violation of the CTA, to be calculated on an accrued basis. The CTA also provides for a criminal penalty of up to two (2) years’ imprisonment for CTA violations.

*20. What if I mistakenly provide incorrect information in my reporting company’s filing?*

The CTA provides for a safe harbor whereby reporting companies have ninety (90) days to correct any incorrect information provided to FinCEN.

FinCEN has announced that before the Effective Date, two additional rulemakings are to be released, which are expected to shed additional light on the path to CTA compliance. RMF continues to monitor updates from FinCEN and will provide updates as they become available. If you have any questions or would like to discuss how this applies to your business, please contact:

**Russell H. Stern, Esq.**  
516.663.6582  
rstern@rmfpc.com

**Alexandra C. Piscitello, Esq.**  
516.663.6653  
apiscitello@rmfpc.com