

## CORPORATE TRANSPARENCY ACT

### Executive Summary\*

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This Executive Summary is to alert clients and friends of Krause Law LLC as to the new federal reporting requirements that apply to most small business entities and many large ones as well, whether they are already in existence or are newly formed after January 1, 2024. The details are extensive and complex, and often counterintuitive, so this Executive Summary should not be the only source of information for specific entities and individuals in evaluating their unique circumstances and reporting obligations.

The Corporate Transparency Act, or “CTA,” is a component of the National Defense Authorization Act for Fiscal Year 2021, which was passed into law January 1, 2021, and made effective January 1, 2024. Although its purpose is generally to combat the use of shell companies engaged in money laundering, terrorist financing and financial fraud, etc., it casts a very wide net beyond that general purpose. The CTA is estimated to apply to 32.6 million reporting companies already formed prior to 2024, and an additional 5.4 million new reporting companies formed each year beginning with 2024.

CTA reporting is administered by the Financial Crimes Enforcement Network, or “FinCEN,” of the U.S. Department of Treasury. Reporting is made through an online Beneficial Ownership Secure System, or “BOSS,” which is accessible beginning January 1, 2024.

A “**reporting company**” is any business entity that is created or that registers to do business by filing a document with a state secretary of state (or similar official), *e.g.* articles of incorporation (for corporations) or articles of organization (for limited liability companies), that does not fall within specific, limited excluded categories. Those excluded categories are generally large operating companies (must meet specific criteria), companies already subject to governmental regulation, tax-exempt organizations and governmental or quasi-governmental entities. In short, any business entity that is created or registers by a document filing, that meets *any one of the following three tests*, is likely a reporting company for CTA purposes:

- Has less than 21 full-time employees; or
- Has \$5.0 million or less in U.S. gross receipts or sales based on the prior year’s federal tax filing; or
- Has no physical presence in the U.S.

Each reporting company, in addition to reporting information about itself, must report information regarding individuals who fall within either one of the following two categories:

- The company’s “**beneficial owners**,” who generally include:
  - Any person who directly or indirectly owns 25% or more of the company’s ownership interests.
  - Any other person who has “substantial control” over the company—this includes senior officers (*e.g.* president, everyone with “chief” in their title, general counsel, etc.),

individuals with authority to appoint or remove officers and other important decision-makers.

- For entities formed after 2023, the company's "**company applicants**"—in most cases this means the individual who actually signs the paperwork to be filed with the secretary of state to create or register the company, *e.g.* the incorporator or organizer.

As mentioned above, **information is reported to FinCEN through BOSS**. The following information on the *reporting company* must be reported:

- Legal name
- Any dba names
- Principal place of business and street address
- Jurisdiction of creation or registration
- Unique identification number (*e.g.* EIN)

The following information on *beneficial owners and company applicants* must be reported:

- Full legal name
- Date of birth
- Current residence (or business address for company applicants)
- Unique identifying number (*e.g.* driver's license or passport number)
- Photograph
- *NOTE:* For individuals who will be frequent reporters, they will be able to get a special FinCEN identifying number to use instead of reporting all this information each time a report must be made.

The **reporting deadlines** for reporting companies are as follows:

- By December 31, 2024, for reporting companies already in existence on January 1, 2024, *i.e.* they have an entire year to make their initial report.
- Within thirty days of the date of creation or registration, for reporting companies formed January 1, 2024, or after.
  - *NOTE:* On November 29, 2023, FinCEN amended its rules to extend the filing deadline from 30 days to 90 days, only for reporting companies formed in 2024.
- Reports must be updated within 30 days of any change in the previously reported information.

The **penalties for CTA non-compliance** are steep! The penalties include escalating fines of \$500 per day up to \$10,000 per violation, and possible jail time up to two years.

Just to make it more complex, here are **a few surprising details**:

- Although pre-2024 entities have the entire 2024 year to file their initial report, if the entity is a reporting company as of January 1, 2024, it must still report by the end of 2024 even if it becomes no longer subject to the reporting requirements due to a change that occurs during 2024 before the report is filed. For example, this means the reporting obligation cannot be avoided by terminating an entity's existence after January 1, 2024.
- Entities created or registered during 2023 likely will not be able to meet the criteria for a large operating company at January 1, 2024, as it probably will not yet have filed its 2022 tax returns, which could indicate more than \$5.0 million in gross receipts or sales.

- CTA requirements are evaluated for each separate entity, including each entity within a family of companies, so that for example a parent company's reporting (or exemption from reporting) does not necessarily cover its subsidiary companies or other affiliated companies.
- If a business entity was previously "administratively dissolved" rather than formally terminated in accordance with state statutes, it can still be a reporting company because it is easily reinstated.
- Attorneys or paralegals (or their administrative assistants) who routinely sign and file creation or registration documents for their clients likely will be "company applicants" subject to the CTA reporting requirements.

**BOTTOM LINE:** The CTA must be addressed, and cannot be ignored, by any entity that is a reporting company, which will include most small businesses. This is not a big-company issue! And the issues will not simply go away.

**For additional information**, or assistance in complying with the CTA reporting requirements, please contact Philip N. Krause, Founding Member of Krause Law LLC, at [philip@krauselawkc.com](mailto:philip@krauselawkc.com), or 816.841.1391.

Additional information is also available directly from FinCEN:

- Beneficial Ownership Information home page, including online portal to BOSS: [Beneficial Ownership Information Reporting | FinCEN.gov](https://finccen.gov/boss/)
- Frequently Asked Questions: [Beneficial Ownership Information Reporting | FinCEN.gov](https://finccen.gov/boss/)

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