

# The Corporate Transparency Act Is Here and the New York LLC Transparency Act Is Coming

Skadden

01 / 31 / 24

If you have any questions regarding the matters discussed in this memorandum, please contact the attorneys listed on the last page or call your regular Skadden contact.

This memorandum is provided by Skadden, Arps, Slate, Meagher & Flom LLP and its affiliates for educational and informational purposes only and is not intended and should not be construed as legal advice. This memorandum is considered advertising under applicable state laws.

One Manhattan West  
New York, NY 10001  
212.735.3000

The Corporate Transparency Act and its implementing regulations (together CTA) came into effect on January 1, 2024, requiring entities within its scope to disclose information, including about their beneficial owners, to the U.S. Treasury Department's Financial Crimes Enforcement Network (FinCEN). FinCEN has issued guidance to help clarify key aspects of these sweeping reporting requirements.

In addition, on December 22, 2023, the governor of New York State signed into law the New York LLC Transparency Act (NY LLC Act), which will impose its own set of disclosure requirements when it takes effect on December 21, 2024. This law is broadly patterned after the CTA and incorporates many of its provisions by reference, but applies only to limited liability companies formed or authorized to do business in New York.

In this article, we outline the basic reporting requirements of the CTA and significant features of the related explanatory guidance published by FinCEN. We also summarize the core elements of the NY LLC Act, highlighting where it overlaps with and differs from the CTA.

## Background of the CTA

The Corporate Transparency Act was enacted as part of the Anti-Money Laundering Act of 2020, which included a host of other significant updates intended to combat money-laundering, tax fraud and the financing of terrorism.<sup>1</sup> Entities subject to the CTA must file a Beneficial Ownership Information Report (BOI report) within the timeframes set out in the CTA.

FinCEN issued a final rule on September 29, 2022 (Final Rule) implementing the reporting provisions of the Corporate Transparency Act,<sup>2</sup> and has since promulgated additional regulations to amend the Final Rule and further implement the act. Among other things, these additional regulations:

- extend the deadline for certain entities to file their initial BOI reports; and
- detail the circumstances in which ownership information FinCEN receives may be shared with other branches of the U.S. government, foreign governments or financial institutions, and how that information will be protected.

FinCEN has also published guidance regarding the scope of the CTA's reporting obligations, including a [Small Entity Compliance Guide](#) and [FAQs](#). Most recently, on January 12, 2024, FinCEN provided additional clarification on certain aspects of the CTA reporting framework with respect to the determination of "company applicants" and the scope of the "subsidiary exemption."

FinCEN maintains a [web page](#) with its rules and other CTA resources.

## Requirements Under the CTA

### What Is the Timeline for Filing an Initial BOI Report?

- An entity subject to the CTA and formed or registered to do business in the U.S. before January 1, 2024 (*i.e.*, the CTA's effective date), must file its initial BOI report no later than January 1, 2025.

<sup>1</sup> See our January 7, 2021, client alert "[US Enacts Historic Legislation To Strengthen Anti-Money Laundering and Counterterrorist Financing Legal Framework.](#)"

<sup>2</sup> See our October 28, 2022, client alert "[FinCEN Issues Final Rule on Beneficial Ownership Reporting Under the CTA.](#)"

# The Corporate Transparency Act Is Here and the New York LLC Transparency Act Is Coming

- An entity subject to the CTA and formed or registered to do business in the U.S. on or after January 1, 2024, and before January 1, 2025, must file its initial BOI report within 90 calendar days of its formation or registration becoming effective.<sup>3</sup>
- An entity subject to the CTA and formed or registered to do business in the U.S. on or after January 1, 2025, must file its initial BOI report within 30 days of its formation or registration becoming effective.

## What Entities Are Subject to the CTA?

**Reporting companies.** The CTA's reporting requirements apply only to "reporting companies," defined as any domestic or foreign corporation, limited liability company or other entity that is formed or, in the case of foreign entities, registered to do business in any U.S. state or tribal jurisdiction by filing a document with a secretary of state or any similar office under state or tribal law.

**Exemptions.** Twenty-three categories of entities are specifically exempted from the reporting requirements, including: "large operating companies" with a U.S. presence; companies registered with the Securities and Exchange Commission under the Securities Exchange Act of 1934, the Investment Company Act of 1940 or the Investment Advisers Act of 1940; and companies whose ownership interests are controlled or wholly owned, directly or indirectly, by one or more entities that themselves qualify for certain exemptions (subsidiary exemption).<sup>4</sup>

In the FAQs issued on January 12, 2024, FinCEN explains that, in order for an entity to qualify for the subsidiary exemption the entity's "ownership interests must be *fully, 100 percent* owned or controlled by" certain other exempt entities.<sup>5</sup> That is, an entity falls under the subsidiary exemption if all of the entity's ownership interests are (1) entirely controlled by one or more exempt entities or (2) wholly owned by one or more exempt entities.

Exempt entities that have not yet submitted their initial BOI reports are not required to make any filing under the CTA to affirmatively claim an exemption.

<sup>3</sup> The deadline for this category was originally 30 days after formation or registration becoming effective, but on November 30, 2023, [FinCEN amended the Final Rule](#) to extend the deadline in order to give such entities time to understand the new reporting obligation and collect the necessary information.

<sup>4</sup> For a complete list of the 23 exemptions, see [31 CFR § 1010.380](#), section 1.2 of the Small Entity Compliance Guide and C.2 of the FAQs.

<sup>5</sup> See L.6 of the FAQs (FinCEN interprets "control" for purposes of the subsidiary exemption to mean "that the exempt entity entirely controls all of the ownership interests in the reporting company, in the same way that an exempt entity must wholly own all of a subsidiary's ownership interests for the exemption to apply").

## What Information Must Be Reported?

A reporting company must disclose certain information about the reporting company itself, its "beneficial owners" and, for reporting companies formed on or after January 1, 2024, a maximum of two "company applicants."<sup>6</sup>

The reporting company is required to report the following information about itself:

1. its full legal name and any alternative names through which it engages in business (*e.g.*, trade names or "doing business as" names);
2. its current U.S. business street address or primary location in the U.S.;
3. its jurisdiction of formation or registration; and
4. its Taxpayer Identification Number or, in the case of a foreign reporting company that has not been issued one, a tax identification number issued by a foreign jurisdiction and the name of the foreign jurisdiction.

The reporting company is required to report the following information for each beneficial owner and, if applicable, company applicant:

1. full legal name;
2. date of birth;
3. current residential address or, in the case of a company applicant who forms or registers an entity in the course of such company applicant's business, current business street address;
4. a unique identifying number from a valid U.S. passport, valid U.S. identification document or valid U.S. driver's license or, if an individual does not possess any of these documents, a valid foreign passport; and
5. a scanned copy of the document from which the unique identifying number was obtained.

The CTA permits a beneficial owner or company applicant to obtain a FinCEN identifier — a unique identifying number assigned to an individual who submits the same information required to be disclosed in a BOI report — that a reporting company can report in lieu of the beneficial owner's or company applicant's personal information listed above.

In a [separate final rule](#) issued by FinCEN to implement the access and safeguard provisions of the CTA (Access Rule),

<sup>6</sup> Note that anyone whom the reporting company authorizes to act on its behalf (*e.g.*, third-party service providers) may file a report with FinCEN on behalf of the reporting company. See [B.8 of the FAQs](#).

# The Corporate Transparency Act Is Here and the New York LLC Transparency Act Is Coming

FinCEN prescribed the circumstances under which information reported under the CTA may be disclosed and how it must be protected. Pursuant to the Access Rule, which becomes effective February 20, 2024, information disclosed to FinCEN is confidential and can be shared only with the following recipients under specific circumstances:

- **Federal agencies** engaged in national security, intelligence, or law enforcement activities;
- **Federal functional regulators and other regulatory agencies** engaged in supervisory activities with respect to regulated financial institutions;
- **State, local and tribal law enforcement agencies** where a “court of competent jurisdiction” has authorized the agency to seek the information in connection with a criminal or civil investigation, such as by approving the issuance of a subpoena;
- **Foreign requesters** where the request is made on behalf of a foreign law enforcement agency, prosecutor, judge or other competent authority, and the request satisfies certain stringent criteria;
- **Financial institutions** to allow the financial institution to facilitate compliance with FinCEN’s customer due diligence requirements, provided the financial institution requesting the information has the relevant reporting company’s consent; and
- **Treasury Department personnel** for tax administration purposes or whose official duties require such access.

The Access Rule generally prohibits recipients from further disclosing information unless they meet certain specific requirements. In particular, financial institutions that receive information from FinCEN must implement safeguards reasonably designed to protect the information to the same standard applicable to their customers’ nonpublic personal information.

A violation of the CTA’s access and use requirements carries a civil penalty of \$500 for each day the violation continues or has not been remedied. Criminal violations can lead to a fine of up to \$250,000, imprisonment for up to five years, or both, with the possibility of enhanced penalties where the violation occurs while a person is violating other laws or as part of a pattern of any illegal activity involving more than \$100,000 in a 12-month period.

## Who Are the Beneficial Owners of a Reporting Company?

Subject to certain exceptions, a “beneficial owner” of a reporting company is any *individual* who, directly or indirectly, either (i) exercises “substantial control” over the reporting company; or (ii) owns or controls at least 25% of the “ownership interests” of the reporting company.

**Substantial control.** An individual has “substantial control” over a reporting company if the individual:

1. serves as a senior officer;
2. has authority over appointment or removal of any senior officer or a majority of the board of directors;
3. directs, determines or has substantial influence over important decisions (*e.g.*, the nature, scope and attributes of the business; reorganization, dissolution or merger of the company; major expenditures or investments, issuances of equity, incurrence of significant debt; amendments to any substantial governance documents); or
4. has any other form of substantial control.

**Ownership interests.** The term “ownership interest” with respect to a reporting company covers virtually all instruments or other mechanisms used to establish ownership of a legal entity, including equity and similar instruments; capital and profit interests; convertible instruments; and puts, calls, straddles and other similar options or privileges.

An individual may directly or indirectly own or control an ownership interest in a reporting company as a result of any contract, arrangement, understanding, relationship or otherwise, including through joint ownership; through a trust or similar arrangement that holds such ownership interest (*e.g.*, as a trustee of the trust and, in certain cases, as a beneficiary of the trust); or through ownership or control of one or more intermediary entities.

For purposes of determining whether an individual owns or controls at least 25% of the ownership interests of a reporting company, the individual’s total ownership interests in the reporting company are calculated as a percentage of the reporting company’s total outstanding capital and profit interests, voting power or value, as applicable.

## Who Are Company Applicants of a Reporting Company?

The CTA defines a “company applicant” as the individual who files, on or after January 1, 2024, the document that forms a domestic reporting company or first registers a foreign reporting company to do business in the U.S. and, if more than one individual is involved in that filing, the individual primarily responsible for directing or controlling the filing.<sup>7</sup> A reporting company can therefore have a maximum of two company applicants: (1) the individual who actually files the formation or registration document; and (2) if applicable, the individual who directs or controls the filing.

<sup>7</sup> In FAQs issued on January 12, 2024, FinCEN explains that the individual who is primarily responsible for directing or controlling the filing is likely to be the same individual responsible for making decisions about the filing, such as how the filing is managed; what contents are included in the document being filed; and when and where the filing occurs. See E.5 of the FAQs.

# The Corporate Transparency Act Is Here and the New York LLC Transparency Act Is Coming

## Other Reporting Timelines

In addition to its initial BOI report, a reporting company must file an updated BOI report within 30 days of any change to the information about the company or its beneficial owners, and must file a corrected BOI report within 30 days of becoming aware of, or of when it should know of, any inaccuracy in the information about the company or its beneficial owners on a filed BOI report. However, a reporting company is not required to file an updated or corrected BOI report if information about a company applicant changes.

If, after filing a BOI report with FinCEN, an entity no longer qualifies as a reporting company by virtue of falling within one of the exemptions, the entity must also file an updated report with FinCEN within 30 calendar days of becoming exempt under the CTA.

Other than the initial BOI report and any required updated or corrected BOI reports, there is no periodic reporting obligation for a reporting company.

## Penalties for Violations of the CTA

It is a violation of the CTA for any person (*i.e.*, the reporting company, any individual or any other entity) to “willfully provide, or attempt to provide, false or fraudulent [information] ... or to willfully fail to report complete or updated beneficial ownership information to FinCEN.” So, while the reporting company itself — and not its beneficial owners or any other party — is responsible for reporting required information to FinCEN, individuals or other entities may violate the CTA where that individual or entity causes the reporting company to fail to satisfy its reporting obligations.

The CTA establishes civil penalties of up to \$500 for each day a violation continues or has not been remedied and, for persons that criminally violate the CTA, fines of up to \$10,000, imprisonment for up to two years, or both.

## General Overview of the NY LLC Act

Beginning on December 21, 2024, the NY LLC Act will require entities falling within the definition of a reporting company under the CTA to disclose information to the New York Department of State (NY DoS) for each beneficial owner of the reporting company (also determined within the meaning of the CTA). Although the NY LLC Act incorporates the CTA definition of reporting company by reference, the disclosure requirements apply only to limited liability companies formed or authorized to do business in the State of New York.

If a limited liability company qualifies for exemption under the CTA, it also is exempt from the disclosure requirements of the

NY LLC Act. Unlike the CTA, however, the NY LLC Act requires a member or manager of the limited liability company to file a signed statement with the NY DoS indicating which provision or provisions of the CTA they rely on in claiming exemption.

A reporting limited liability company must file a beneficial ownership disclosure with the NY DoS identifying each beneficial owner of the reporting company by the individual’s full legal name, date of birth, current business street address (as opposed to a current residential address as required by the CTA) and a unique identifying number from a valid identification document. The NY LLC Act does not require a copy of the valid identification document to be submitted with the disclosure. Additionally, the NY LLC Act does not require the disclosure of identifying information related to a company applicant, which is a concept that applies only to reporting companies under the CTA.

The most significant and problematic difference between the NY LLC Act and the CTA is that, as originally written, the NY LLC Act would have made certain reported information accessible through a new publicly available database. However, it is expected that the NY LLC Act will be amended prior to its effective date by a chapter amendment to remove this public disclosure element and, more in line with the Access Rule under the CTA, require that disclosed information be accessible only by certain government agencies and officers.<sup>8</sup>

In the case of a reporting limited liability company formed or registered to do business in the State of New York on or before December 21, 2024 (*i.e.*, the NY LLC Act’s effective date), an initial disclosure must be filed with NY DoS no later than January 1, 2025. For a reporting limited liability company formed or registered to do business in the State of New York after December 21, 2024, the initial disclosure is due at the time of filing of the articles of organization or application for authority. An updated disclosure must be filed within 90 days of any change to the information required to be disclosed to NY DoS by a reporting limited liability company.

If a reporting limited liability company fails to file a required disclosure for a period exceeding 30 days, it will be shown either as “past due” or “delinquent” on the records of NY DoS until the disclosure is appropriately filed and, in some cases, a civil penalty of \$250 is paid.

<sup>8</sup> Governor Hochul signed the bill on the basis of a compromise agreement with the New York Legislature to address her concerns that “[t]he bill as drafted was overly broad, and required changes to ensure it serves the core purpose of exposing unlawful activity while balancing personal privacy .... To that end, amendments were necessary to clarify that the database should be accessible only to those in government who have a law enforcement interest in the information. Doing so will allow individuals to be held accountable for misconduct, while preventing unnecessary intrusions into personal privacy.” Gov’r Kathy Hochul, N.Y., Approval Memo. 91, Chap. 772, Filed with Senate Bill 995-B (Dec. 22, 2023).

# The Corporate Transparency Act Is Here and the New York LLC Transparency Act Is Coming

---

## Conclusion

Now that the CTA is in effect, reporting companies should ensure they have adequate systems and processes to identify, retain and keep current relevant information and file BOI reports on a timely basis.

In addition to New York, other states have proposed (but not yet adopted) their own reporting frameworks, including California. The NY LLC Act, once effective, and potentially other state entity transparency laws, will add a new layer of complexity to an already challenging set of regulatory requirements. Moreover, open questions remain regarding some aspects of the CTA and the NY LLC Act, and we expect novel issues and additional guidance will continue to emerge as reporting companies grapple with the relevant requirements. Skadden will continue to monitor federal and state developments as they arise.

---

## Contacts

### **Alessio Evangelista**

Partner / Washington, D.C.  
202.371.7170  
alessio.evangelista@skadden.com

### **Eytan J. Fisch**

Partner / Washington, D.C.  
202.371.7314  
eytan.fisch@skadden.com

### **Amy E. Heller**

Partner / New York  
212.735.3686  
amy.heller@skadden.com

### **Anastasia T. Rockas**

Partner / New York  
212.735.2987  
anastasia.rockas@skadden.com

### **Richard H. West**

Partner / Wilmington  
302.651.3178  
richard.west@skadden.com

### **Greg Seidner**

Associate / London  
44.20.7519.7200  
greg.seidner@skadden.com

### **Samantha S. Smith**

Associate / New York  
212.735.3606  
samantha.smith@skadden.com