

Crucial Update: What You Need to Know About the Changes to the Corporate Transparency Act

Corporate Transactions & Financial Services Alert

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John D. Fanburg
Member and Chair, Healthcare



Edward Hilzenrath
Member, Healthcare



David L. Tsin
*Counsel, Corporate Transactions
& Financial Services*

BRACH | EICHLER LLC
Counsellors at Law

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Background

The Corporate Transparency Act of 2019 (CTA) was enacted to create a federal database of the beneficial ownership information of certain entities and provide law enforcement with access to such data for the purpose of detecting, preventing and punishing terrorism, money laundering and other misconduct. As of January 1, 2024, certain entities (Reporting Companies) have been required to file beneficial ownership information reports (BOI Reports) with FinCEN, a department within the U.S. Department of the Treasury. BOI Reports identify who owns or controls certain entities and the applicants who formed or registered these entities. Entities created or registered on or after January 1, 2024, have had 90 days (after such creation or registration) to file their initial BOI Reports. Entities created or registered prior to January 1, 2024 have had until January 1, 2025 to file their initial BOI Reports. Reporting Companies file their BOI Reports electronically on FinCEN's website.

The CTA provides exemptions from BOI Reporting for certain entities, including, but not limited to, certain tax-exempt entities, certain inactive entities, sole proprietorships not created by filing documentation with a secretary of state and certain "large operating entities." Large operating entities may qualify for exemption if they meet certain key criteria, including: (1) employing more than 20 full time employees in the United States; and (2) filing a federal income tax or information return showing more than \$5 million in gross receipts or sales for the previous year. Entities that existed on January 1, 2024, even if they were subsequently dissolved, have had to file a BOI Report by December 31, 2024. Additionally, entities that were formed in 2024, even if they were dissolved before the 90 day filing deadline, have had to file a BOI Report within that filing deadline.

Under the CTA, willful failure to complete or update an entity's BOI Reports or providing false or fraudulent information can result in civil or criminal penalties. Civil penalties include monetary fines of up to \$500 for each day that the violation continues, while criminal penalties include imprisonment for up to two years and/or a fine of \$10,000.

Update

On December 3, 2024, a federal district court in Texas found that the CTA is likely unconstitutional and preliminarily enjoined its enforcement nationwide. FinCEN has since published an alert stating that, in light of that court order, "reporting companies are not currently required to file beneficial ownership information with FinCEN and are not subject to liability if they fail to do so while the order remains in force. However, reporting companies may continue to voluntarily submit beneficial ownership information reports." Thus, as it currently stands, Reporting Companies that were required to file a BOI Report by the end of this year are not required to do so. However, that could change very quickly depending on the government's next steps. As a result, we recommend that entities that were subject to the abovementioned January 1, 2025 deadline consider complying with the CTA reporting requirement by December 31, 2024.

Companies should not assume that the abovementioned January 1, 2025 deadline will ultimately be extended without further guidance from FinCEN.

Entities that believe they may be subject to the CTA reporting rule should closely monitor this matter and consult with their advisors, as necessary, to understand whether and when they need to comply with the CTA reporting rule's requirements and allow for sufficient lead time in advance of any filing deadline.

If you have any questions about this article, please contact any of the attorneys listed below or your usual Brach Eichler contact person.

John D. Fanburg, *Managing Member and Chair, Healthcare Law Practice*, at jfanburg@bracheichler.com or 973-403-3107

Edward Hilzenrath, *Member, Healthcare Law Practice*, at ehilzenrath@bracheichler.com or 973-403-3114

David L. Tsin, *Counsel, Corporate Transactions & Financial Services Practice*, at dtsin@bracheichler.com or 973-364-5237

Authors

The following attorneys contributed to this insight.



John D. Fanburg

Managing Member
Healthcare Law, Cannabis Industry

973.403.3107 • 973.618.5507 Fax
jfanburg@bracheichler.com



Edward Hilzenrath

Member
Healthcare Law

973.403.3114 • 973.618.5594 Fax
ehilzenrath@bracheichler.com



David L. Tsin

Counsel

Corporate Transactions & Financial
Services

973.364.5237 • 973.629.1507 Fax

dtsin@bracheichler.com