
Hughes Hubbard & Reed

U.S. Beneficial Ownership Reporting Regime to Take Effect January 1, 2024—What to Know

Client Advisories

Hughes Hubbard & Reed LLP • A New York Limited Liability Partnership
One Battery Park Plaza • New York, New York 10004-1482 • +1 (212) 837-6000

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December 14, 2023 – As a reminder, the Corporate Transparency Act (the “CTA”) is due to take effect on January 1, 2024. This is the first time that the U.S. will require beneficial ownership reporting in the context of entity formation, and it will bring drastic change. Entities that market participants routinely create for transactional purposes – for instance, SPVs, merger subsidiaries, intermediate holding companies, fund structures and tax planning vehicles – may become subject to beneficial ownership reporting, regardless of whether they are domestic or non-U.S. entities, which could significantly extend the timeline for creating such entities. Violations may result in civil fines of up to \$500 per day and criminal penalties of up to two years in prison.

Below please find a short overview of the CTA. If you have any questions, please don’t hesitate to reach out. FinCEN also published a beneficial ownership information reporting FAQ, which can be found [here](#), and a small entity compliance guide, which can be found [here](#). We expect FinCEN to be providing additional guidance in coming weeks and months.

Please contact [Chuck Samuelson](#), [Gerold Niggemann](#), [Devon Pope](#) or [Michael Traube](#) with any questions about the CTA.

[What are the deadlines for reporting beneficial owners?](#)

Existing entities created before January 1, 2024	Entities created on or after January 1, 2024	Entities created on or after January 1, 2025
January 1, 2025	Within 90 calendar days after creation	Within 30 calendar days after creation

Changes in beneficial ownership require updating the information filed with FinCEN within 30 days after such change occurs.

Which entities will have to report their beneficial owners?

Subject to the exemptions below, the following entities will become subject to beneficial ownership reporting:

- Domestic corporations, limited liability companies, limited partnerships and other registered business entities; and
- Non-U.S. entities registered to do business in the U.S.

Exemptions from reporting

There are 23 statutory exemptions from the reporting requirements, some quite substantial. The most relevant exemptions from a practical perspective include:

- Large operating companies, defined as an entity that has:
 - more than 20 full-time employees in the U.S.,
 - an operating presence at a physical office in the U.S., and
 - more than \$5 million in gross receipts/sales on its filed prior year U.S. federal income tax return (excluding gross receipts/sales from foreign sources)
- Issuers of SEC-registered securities
- SEC-registered investment companies or investment advisers
- Venture capital fund advisers
- Tax-exempt entities
- Insurance companies and certain other highly regulated entities
- Wholly owned/controlled subsidiaries of certain exempt companies

Who is considered a beneficial owner?

- Individuals who own or control at least 25 percent of the ownership interests of the reporting entity, based on the greater of economic value and voting power (convertible instruments, warrants and options are included in such determination); and
- Individuals who, directly or indirectly, exercise substantial control over the reporting entity, which is vaguely defined and includes:
 - Senior officers (e.g., CFOs, COOs, general counsels)
 - Shareholders with the right to appoint any senior officer or a majority of the members of the governing body of the reporting entity
 - Anyone with substantial influence over important decisions (note that a “beneficial owner” can be any individual that fits this criteria, regardless of whether they actually own or control any interest in the reporting entity)

What personal information will have to be reported?

For each beneficial owner and company applicant (the person making the filing for the creation of the entity, typically an attorney or paralegal):

- Full legal name
- Date of birth
- Current residential address (unless the company applicant handles such filings in the course of their business, in which case, include their current business address)
- Copy of such individual’s passport (if not a U.S. person, a foreign passport), driver’s license or other governmental identification with a unique identifying number

Beneficial owners and company applicants will be able to apply for a unique FinCEN identifying number (by providing FinCEN the same information set forth above). When issued, this FinCEN identifying number can be used in place of the

personal information set forth above in the beneficial ownership filing. Reporting entities can also apply for a unique FinCEN identifying number.

Will information on beneficial owners become public?

Unlike in many other jurisdictions, information on an entity's beneficial owners will not be publicly available. Since the purpose of the CTA is to fight illicit money flows, the information must be reported to the U.S. Treasury's Financial Crimes and Enforcement Network ("FinCEN"). FinCEN will store the filed information in a centralized database that utilizes the same security controls as other federal databases. FinCEN may share certain information with other governmental agencies (including foreign officials) that request it, and with the consent of the reporting company, financial institutions in certain circumstances.

Note, however, that the legislature of the State of New York has adopted the New York LLC Transparency Act (not yet in effect). It would be applicable only to LLCs operating in New York. The NY LLC Transparency Act still needs to be signed by Governor Hochul, and it is unclear if she will. The key difference between the NY LLC Transparency Act and the CTA is that certain information (names and business addresses of beneficial owners) filed under the NY LLC Transparency Act would be publicly available, subject to certain exemptions.

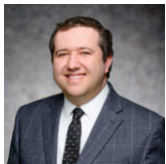
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