

# Holifield & Janich

PLLC

## **The Corporate Transparency Act Affects Millions of Corporations and LLCs**

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Effective January 1, 2024, most new and existing corporate entities in the United States will be required to file reports on their beneficial owners with the federal government pursuant to the Corporate Transparency Act (the “CTA”). The CTA is an expansion of anti-money laundering laws and is intended to help prevent and combat money laundering, terrorist financing, corruption, tax fraud, and other illicit activity. Reports will be filed with the Department of the Treasury’s Financial Crimes Enforcement Network, or FinCEN.

The information reported to FinCEN under the CTA will be accessible to the following: Federal agencies engaged in national security, intelligence, and civil and criminal law enforcement; the Department of the Treasury in connection with its official duties, including tax administration; and state and local law enforcement agencies in connection with criminal or civil investigations. The information will not be accessible to the public and is not subject to requests under the Freedom of Information Act. However, if the reporting company consents, the information may be disclosed to financial institutions to assist in their anti-money laundering compliance activities.

It is important to note that the law carries potential civil and criminal penalties for non-compliance, including a civil penalty of up to \$500 per day that the violation continues (with a cap of \$10,000 in fines) and imprisonment for not more than two years, or both. As such, please reach out to our office to ensure your company is in compliance with the CTA.

### **Entities Required to File Reports**

Reports must be filed by domestic and foreign “reporting companies,” which are defined as follows:

- Domestic reporting company – any entity that is a corporation, a limited liability company, or otherwise created by the filing of a document with a secretary of state or similar office.
- Foreign reporting company – any entity formed under the law of a foreign country and registered to do business in any U.S. state by the filing of a document with a secretary of state or similar office.

Those entities required to file should potentially not include common law trusts and general partnerships, even if those entities make an optional filing with state officials, because those entities generally are not formed by filing a document. However, these entities are not included in the list of entities expressly excluded.

### **Entities Exempt from Filing Reports**

More than 20 types of entities are exempted from the reporting requirements. Below is a list of some of the more significant exemptions:

- SEC-reporting companies
- Regulated financial services companies, including banks, credit unions, depository institution holding companies, registered securities broker-dealers, registered investment companies and investment advisers, venture capital fund advisers, and pooled investment vehicles that are operated or advised by the foregoing
- Insurance companies and insurance producers licensed by a state and having a physical operating presence in the U.S.
- PCAOB-registered accounting firms
- Tax-exempt entities
- Inactive entities that existed before January 1, 2020, are not engaged in active business, are not owned by a foreign person, have not had a change in ownership in the last 12 months, have not sent or received funds greater than \$1,000 in the last 12 months, and do not hold any assets
- Subsidiaries of certain exempt entities
- Any “large operating company,” meaning any entity that:
  - Employs more than 20 full time employees in the United States (not counting employees of subsidiaries or affiliates unless also actually employed by the subject company);
  - Has an operating presence at a physical office within the United States; AND
  - Filed a federal income tax or information return in the United States for the previous year demonstrating more than \$5,000,000 in gross receipts or sales on a consolidated basis (excluding receipt/sales from sources outside the U.S.)
    - It is important to note that if a company falls below the above referenced thresholds in the future, a report must be filed within 30 days. An updated report is required if a reporting company later becomes eligible for the exemption
- Any entity with ownership interests that are controlled or wholly owned, directly or indirectly, by one or more entities described above

## **Due Dates for Filing Reports/Updating Reports**

- If the company is created on or after January 1, 2024, then the initial report is due within 30 calendar days of the date the entity is created
  - Effective January 1, 2024, all new entities that are required to file a report must do so within 30 days of their creation
- If the company was formed before January 1, 2024, then the initial report is due no later than January 1, 2025

If there is any change with respect to information previously reported, the reporting company is required to file an updated report within 30 calendar days after the date on which the change occurs. Examples of changes that would require an updated report include the following:

- Changes in who is a beneficial owner, e.g., due to transfers of ownership or sales of additional ownership interests
- A reporting company becoming exempt from the reporting requirements.
- Transfers of ownership interests due to an owner's death
- Transfers of ownership when a minor child reaches the age of majority
- Any changes to an identifying document previously submitted, e.g., changes in name, address, or identifying number

In addition, if the reporting company becomes aware of mistakes or inaccuracies in a report that has already been filed, it must file a corrected report within 30 calendar days after the date on which the reporting company becomes aware or has reason to know of the inaccuracy.

## **Reporting Requirements**

### *1. Information about the Reporting Company.*

The report will require the following information about the entity:

- Full legal name of the Company
- Any trade name or “doing business as” name
- Current address
- Jurisdiction of formation
- Federal taxpayer ID number

### *2. Information about the Reporting Company's Beneficial Owners*

#### *a. Who is a Beneficial Owner?*

A beneficial owner is any individual who, directly or indirectly, either exercises “substantial control” over the company or owns or controls at least 25% of the company's ownership interests.

While the regulations do not clearly define “substantial control,” below are some examples of individuals exercising “substantial control” over a company:

- Serves as a senior officer (even if the individual does not hold an equity interest);
- Has authority over the appointment or removal of any senior officer or a majority of the board of directors (or similar body); or
- Directs, determines, or has substantial influence over important decisions, including decisions regarding:
  - The nature, scope, and attributes of the business of the entity, including the sale, lease, mortgage, or other transfer of any principal assets of the entity;
  - The reorganization, dissolution, or merger of the entity;
  - Major expenditures or investments, issuances of any equity, incurrence of any significant debt, or approval of the operating budget of the entity;
  - The selection or termination of business lines or ventures, or geographic focus, of the entity;
  - Compensation schemes and incentive programs for senior officers;
  - The entry into or termination, or the fulfillment or non-fulfillment, of significant contracts; or
  - Amendments of any substantial governance documents of the entity, including the articles of incorporation or similar formation documents, bylaws, and significant policies or procedures

Individuals may exercise control directly or indirectly, through board representation, ownership, rights associated with financing arrangements, or control over intermediary entities that separately or collectively exercise substantial control. Indirect ownership or control of a company or its ownership interests may include the following:

- Joint ownership with one or more other persons
- Through another individual acting as a nominee, intermediary, custodian, or agent
- As trustee, grantor/settlor, or beneficiary of a trust
- Through ownership or control of one or more intermediary entities that separately or collectively own or control ownership interests of the reporting company

*b. Information Required to Report about Beneficial Owners*

The identifying information required to be reported for Beneficial Owners includes:

- Full legal name
- Date of birth
- Current residential or business street address
- A unique identifying number from an acceptable identification document (such as a State issued ID or passport) along with an image of the document

*3. Information about the Company Applicants*

*a. Who is a Company Applicant?*

The “company applicant” is the individual who directly files the document that creates the reporting company. It also includes the individual who is primarily responsible for directing or controlling the filing if more than one individual is involved in the filing of the document.

In many cases, the company applicant will also be a beneficial owner of the company. Third parties such as attorneys and paralegals may also be considered company applicants if they file corporate formation documents on behalf of clients.

Entities created prior to January 1, 2024, do not need to include information on company applicants.

*b. Information Required to Report about Company Applicants*

The identifying information required to be reported for Company Applicants includes:

- Full legal name
- Date of birth
- Current residential or business street address
- A unique identifying number from an acceptable identification document (such as a State issued ID or passport) along with an image of the document

Company Applicants, such as attorneys, may obtain an identifying number upon request to include on subsequent filings in lieu of repeatedly including the above information.

**Dormant Entities/Entities Dissolved But Not Terminated**

The “inactive entity” exemption for entities existing before January 1, 2020, is narrow and may not include many administratively dissolved or otherwise dormant entities. As such, it is imperative that ALL entities that have not been officially “terminated” meet the strict reporting requirements.

**Conclusion: Take Action Immediately**

The rules for filing contain many nuances which can determine who must report under the CTA. Guidance provided to date leans toward overreporting, as the purpose of these reporting requirements is to broadly begin tracking ownership of the relevant entities. We suggest that you contact us well in advance of reporting deadlines to ensure that all relevant filings are done in a timely manner, knowing that each situation might vary under the specifics of the rules. Any entities for which reporting might be problematic, or mostly but not fully dormant entities, should be addressed well in advance of 2024.

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