

# The Corporate Transparency Act: You Might Have a ‘Reporting Company’

by Gary Fletcher

**D**o you have a small business that operates as a limited liability company (LLC) or as an S Corporation? Do you have an LLC in place for liability protection (for example, on a rental property) or as part of your estate plan? If so, WARNING—you now have a “reporting company” with governmental reporting requirements—and penalties for failing to report.

On January 1, 2021, Congress enacted the Corporate Transparency Act (CTA). The name of the act is deceptive and can lead to the wrong conclusion that it doesn’t affect you—that’s if you have even become aware of this new law. The CTA has a broad reach, affecting “mom and pop” businesses, small real-estate owners, portions of estate plans, and others. Unfortunately, the new law is an unknown to many attorneys, CPAs, financial and other advisors. If your professional advisors don’t know about it, how are you expected to know?

The law is unknown to many because it was buried within voluminous legislation passed as the Fiscal Year 2021 National Defense Authorization Act. Why would a corporate information reporting law be included in a defense bill? The CTA was prompted by lengthy efforts to address money laundering and financing of terrorism. Yes, you heard that right—your small entity has new reporting requirements just in case you’ve been laundering money or financing terrorists!

The CTA exists *now*, as it was enacted on January 1, 2021; however, there

are no *current* reporting requirements. The first reporting deadline is *one year* from the date that final regulations become effective. The CTA mandated that final regulations be issued within one year from January 1, 2021, but to date, that has not occurred. Temporary regulations were issued on December 7, 2021. While awaiting final regulations, you and your advisors should use the time to become familiar with the new reporting requirements and start gathering the necessary information. The task may be onerous or, in some cases, the information impossible to locate.

*Who has the obligation of reporting?* A “reporting company” is a corporation, LLC or “similar entity” that is formed by the filing of a document with the state. If you have an existing LLC or corporation, it is a reporting company. A trust is not a reporting company, but it falls subject to reporting information as a “beneficial owner.”

*What gets reported?* A reporting company is required to report information about “beneficial owners” and “company applicants.” A beneficial owner is an individual who exercises substantial control over the reporting company or owns at least 25% of the reporting company. A company applicant is anyone who filed the application to form the LLC or corporation (that could be you, a lawyer, a CPA, other advisor, and, potentially, their assistants and staff). The disclosure includes the name, date of birth, residential address, and a unique identifying number (for example, driv-

er’s license information). In its current form, the CTA does not have a limit on the look-back date of formation of a corporation or LLC. So, if you formed your entity 30 years ago, it will be reporting information from that date.

*Where is the information reported?* The reports will be submitted to the Financial Crimes Enforcement Network (FinCEN). This is a government entity that currently requires annual disclosure by individuals of certain foreign bank accounts and other foreign assets. The manner of filing is to be determined.

*When is the report due?* For existing reporting companies, the first reports will be due one year from the effective date of final regulations when those are adopted, which could be anytime. For reporting companies formed after the final regulations are issued, a report is due within 14 days of formation of the entity. In addition, when there are changes in beneficial ownership, an updated report is due within 30 days of the changes.

*What if you don’t comply?* As with most other mandatory federal filings, there are penalties for failing to comply. In this case, \$500 per day to a maximum of \$10,000 and possible imprisonment for up to two years.

The obligation of reporting falls on your entity, not on your attorney, CPA, or advisor. If your advisors have not made you aware of this new requirement, inform them, and start preparing now. 🌟

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