

ADVANCED SALES

Corporate Transparency Act (CTA)

Imposes an extensive new reporting requirement for most businesses, their beneficial owners, and persons with substantial control, effective January 1, 2024. This requirement is in addition to other reporting requirements, such as tax filings and reports to state officials. Civil and criminal penalties can be imposed for failure to comply.

Reporting entities

The CTA was enacted January 1, 2021 as part of National Defense Authorization Act (final regulations were issued September 29, 2022). The goal is to help combat money-laundering, terrorism, tax evasion, and other financial crimes.

Corporations, LLCs, and partnerships other than general partnerships (reporting entities) must disclose to Financial Crimes Enforcement Network (FinCEN) information on “beneficial owners”.

Reporting entities are those created by filing with a Secretary of State or similar office.

Exceptions exist for larger corporations (20 or more employees and \$5 million or more of revenue), and heavily regulated entities, e.g. banks/charities. Also exempt are accounting firms, and brokers or dealers in securities. Trusts themselves are not reporting entities unless formed under a state law that requires a filing with the state. However, they may have substantial control of a reporting company, making them subject to reporting requirements. Note that general partnerships are not created through filing with a state official, and therefore would not be a reporting entity.

FinCEN is providing an extended deadline for entities created in 2024. They must file within 90 days of notification by the state authority that its entity existence is approved. Starting January 1, 2025, newly created entities must file within 30 days of notification by the state authority that its entity existence is approved. Entities created before January 1, 2024 will have until 11:59 pm of January 1, 2025, to comply. No extensions of time to file are allowed. Persons and entities required to file a Beneficial Ownership Information Report with FinCEN do so through Fincen’s website at <https://boiefiling.fincen.gov/>. The information may be submitted online or by completing and submitting a fillable PDF form.

Most small businesses will be subject to the new rules. The new rules will also apply to single member LLCs created solely for creditor protection, even if they are ignored for income tax purposes.

Who is a beneficial owner or has substantial control?

A beneficial owner is any individual who directly or indirectly (including through trusts) through any contract, arrangement, understanding, or relationship, exercises control over a reporting company or owns or controls at least 25% (direct or indirect) of a reporting company. Ownership includes any kind of equity interest, including options, puts, and calls, etc.

In addition to owners, those with “substantial control” also have reporting obligations. Substantial control is more complex. It can include:

- A manager, officer, or director of a reporting company entity.
- Anyone with authority to remove a senior officer of majority or the board of directors.
- The trustee, trust protector, or investment director of a trust that owns a beneficial interest.
- The grantor of a trust if they hold a power of substitution.
- The parent or guardian of a minor child who owns a beneficial interest.

A reporting company can have multiple beneficial owners and substantial control persons.

You can become a beneficial owner by inheriting an interest in a reporting company. The rules are uncertain regarding whether the executor of an estate is a reporting person, although that is probably the case. Individuals or trust beneficiaries who are treated as beneficial owners must report within 30 days of obtaining ownership. Again, please note that there is no available extension for reporting.

Minor children who are substantial owners must personally report (or the entity on their behalf), upon attaining of the age of majority, age 18 in most states.

Reporting companies must report:

- Legal name and any trade name of “Doing Business As” (DBA).
- Physical address of place of business.
- State of formation.
- Tax Identification Number; what is required for an LLC/disregarded entity is unclear.
- PDF copy of identifying document from issuing jurisdiction.

Information regarding each beneficial owner and substantial control person:

- Full name.
- Date of birth.
- Home address.
- PDF copy of individual's U.S. passport or state driver's license.

Reporting companies must report any changes to reported information or to beneficial ownership within 30 days.

FinCEN Identifier Number

A beneficial owner may obtain a special identification number and that number alone may be disclosed instead of disclosing all the information otherwise required. The individual is then responsible for keeping their information current with FinCEN. Reporting companies may require their beneficial owners to file with FinCEN to transfer responsibility to the beneficial owners from the reporting company.

Reporting companies may also obtain their own FinCEN identifier number.

Penalties

Penalties include possible jail time for failure to comply with the new rules. There are severe civil and criminal penalties for failing to file (\$500 per day, up to \$10,000, and imprisonment of up to two years).

Professionals creating new entities beginning January 1, 2024

Each reporting company is required to identify and report at least one company applicant, and at most two. All company applicants must be individuals. These include the “direct filer” and the individual who controls the filing action. The direct filer may be a professional, such as a lawyer or paralegal who actually completed the company creation registration.

Filing updates

Any changes are required to be reported within 30 days. These include:

- New DBA.
- Change in beneficial owners or substantial control persons.
- Death of a beneficial owner.
- Change to address of company or any beneficial owner or control person.

What should clients do?

As each situation is different, you should discuss any possible CTA obligations with your personal tax and legal advisors.

The information provided is not written or intended as specific tax or legal advice. MassMutual, its subsidiaries, employees, and representatives are not authorized to give tax or legal advice. Individuals are encouraged to seek advice from their own tax or legal counsel. Individuals involved in the estate planning process should work with an estate planning team, including their own personal legal or tax counsel.

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