
Final Rule Under Federal Corporate Transparency Act Becomes Effective

Similar NYS Statute Applicable to LLCs to Become Effective January 1, 2025

The U.S. Treasury Department's Financial Crimes Enforcement Network (FinCEN) has issued a final rule (the "CTA final rule") under the Corporate Transparency Act (the "CTA") that requires domestic and foreign reporting companies (including corporations, limited liability companies ("LLCs"), and other entities) that are not exempt from the rule to provide certain information about themselves and their beneficial owners. The CTA final rule became effective on January 1, 2024 and can be found [here](#), and an amendment to which can be found [here](#). In addition, New York State has enacted the New York LLC Transparency Act (the "NY LLC Act"), which is similar in many ways to the CTA final rule but applies only to LLCs formed in or doing business in New York. The NY LLC Act will become effective on January 1, 2025 and can be found [here](#). Below is a summary of some of the more significant provisions of these laws.

I. The CTA Final Rule

a. Entities Covered; Exemptions

The CTA final rule applies to domestic corporations, LLCs, and other entities created by filing with the Secretary of State or similar office of a state or Native American tribe. The CTA final rule also applies to corporations, LLCs, and other entities created under the law of a foreign country and registered to do business in any state or tribal jurisdiction by filing with the Secretary of State or similar office of a state or Native American tribe. As used in the CTA final rule, "state" includes any state, commonwealth, territory, or possession of the United States, and the District of Columbia.

The CTA final rule exempts 23 categories of entities, which generally include larger, more heavily regulated entities. The exemptions include banks, brokers or dealers in securities, investment companies and investment advisors, and insurance companies. Given the relatively narrow focus of many of the exemptions, we expect most operating companies will seek to rely on the exemptions for "securities reporting issuers," "large operating companies," and certain subsidiaries of certain exempt entities. A "securities reporting issuer" is an issuer of securities with securities registered or that is required to report under the Securities Exchange Act, and a "large operating company" is one with more than 20 full-time employees in the U.S., an operating presence in a physical office in the U.S., and that has filed a federal tax return for the previous year showing more than \$5 million of gross receipts or sales. A subsidiary is exempt if it is directly or indirectly wholly-owned or wholly controlled by entities falling into certain of the categories of exemptions, including each of the categories listed above. Any subsidiary that is not wholly-owned will need to satisfy an exemption on a standalone basis. Without further guidance from FinCEN, this poses many challenges for companies with complicated organizational structures. Review of the facts and circumstances of any particular ownership structure should be undertaken to determine whether any particular subsidiary qualifies for exemption.

b. Information Required; Availability

The information required to be reported by the CTA final rules includes basic entity-specific information (full legal name, any “doing business as” names, current address, etc.) regarding the company and its beneficial owners, as well as (in the case of the reporting company) its tax ID number or (in the case of beneficial owners) a “unique identifying number,” such as a passport or drivers’ license number, and an image of the relevant document. The CTA final rule defines “beneficial owner” to mean an individual who, directly or indirectly, either has “substantial control” over, or owns or controls at least 25% of the ownership interests of, the reporting company. “Substantial control” includes, among other things, serving as a senior officer, having “substantial influence” over important decisions made by the company (such as those relating to the nature of the business, major expenditures or investments, or issuances of debt or equity) and may be exercised directly or indirectly through a variety of means (such as board representation, ownership or control of a majority of the voting power, or rights associated with financing arrangements). Both the substantial control and interest ownership prongs of the definition are quite detailed, and consequently a determination that one is a beneficial owner may require considerable analysis.

Importantly, the information required to be provided under the CTA final rule will generally not be available to the public but instead will be provided only to federal, state, local, tribal, and certain foreign officials for national security, intelligence, or law enforcement purposes. In addition, with the reporting company’ consent, financial institutions and their regulators may have access in certain circumstances.

c. Due dates

Under the CTA final rule, reporting companies in existence before the January 1, 2024 effective date must file their initial reports before January 1, 2025. Reporting companies created or authorized to do business on or after January 1, 2024 but before January 1, 2025 must file their initial reports within 90 days after receiving notice of their creation or authorization or after publication of such notice by the applicable Secretary of State, whichever is earlier. Reporting companies created or authorized to do business on or after January 1, 2025 must file their initial reports within 30 days of the earlier of the above two dates. Reporting companies also have 30 days to report any changes in the reported information of the company or its beneficial owners.

d. Penalties

Failure to comply with the CTA final rule could result in civil penalties of up to \$500 per day and criminal penalties of up to \$10,000 and/or a prison term of up to two years.

II. The NYS LLC Act

a. Similarities to the CTA Final Rule

The newly-enacted NYS LLC Act is structurally and substantively similar to the CTA final rule. Many of the defined terms used in the NYS LLC Act (including “beneficial owner,” “reporting company,” and “exempt company”) refer directly to the corresponding defined terms in the CTA final rule, and the New York statute requires the same information to be reported and provides the same 23 exemptions as the CTA final rule. Reporting companies also filing under the CTA final rule can meet their filing obligation under the NYS LLC Act by filing the same form with the New York Department of State.

b. Differences from the CTA Final Rule

However, unlike the CTA final rule, the NYS LLC Act applies only to LLCs and will not become effective until January 1, 2025. Furthermore, under the NYS LLC Act, LLCs claiming an exemption from reporting must file a statement setting forth the exemption claimed. In addition, newly-formed New York LLCs and LLCs newly-applying

authorization to do business in New York must file their beneficial ownership disclosure simultaneously with filing their articles of organization or application for authority to do business.

III. Conclusion

The CTA final rule and the NYS LLC Act are complex laws. The related documentation is quite voluminous (including numerous CTA final rule FAQs, which can be found [here](#)), and FinCEN has indicated further interpretations and guidance are forthcoming. Although the CTA final rule filing deadlines allow some time to analyze the requirements, and the NYS LLC Act is not effective until January 1, 2025, companies should be aware that considerable time may be required to carry out the various facts and circumstances analyses that may be necessary.

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If you have any questions about the issues addressed in this memorandum, or if you would like a copy of any of the materials mentioned in it, please do not hesitate to call or email authors Helene Banks (partner) at 212.701.3439 or hbanks@cahill.com; or Geoffrey E. Liebmann (senior counsel) at 212.701.3313 or gliebmann@cahill.com; or email publicationscommittee@cahill.com.

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