VinciWorks

The Corporate Transparency Act: A Guide to Compliance

Understanding FinCEN Rules for Beneficial Ownership Reporting

The Corporate Transparency Act (CTA) comes into force 1 January 2024. The rules are similar to those in the UK where Companies House maintains a register of beneficial owners.

Companies will have different reporting schedules depending on when it was created or registered. If any of the information changes or was found to be inaccurate, it must be updated within **30 calendar days.**

Key terms:

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

Beneficial owner -
anyone who directly or indirectly exercises substantial control over the Reporting Company, or owns or controls at least 25% of the ownership interests of the Reporting Company.

Company applicant -
may be up to two individuals who include: the individual who is primarily responsible for directing or controlling the filing an application to form or register a corporation, limited liability company, or other similar entity under the laws of a state or Indian Tribe, and the individual who directly files the document to create or register the Reporting Company

What's the purpose of the Act?

- Discourage the use of shell corporations ✓
- Requires beneficial ownership information for US entities ✓
- Protect vital US national security interests ✓
- Better enable law enforcement to counter money laundering ✓
- Bring US into compliance with international AML standards ✓

Who does the act apply to?

- Domestic corporations formed in the US ✓
- Foreign corporation registered to business in the US ✓
- Privately held companies ✓
- Company applicants for reporting companies created on or after 1 January 2024 ✓
- Financial services firms already registered with FinCEN ✗
- SEC-registered issuers ✗
- Large operating companies ✗
- Trusts (except REITS) ✗
- General partnerships including joint ventures ✗
- Publicly traded companies ✗
- Tax-exempt entities (501(c), political and charitable trusts) ✗
- Inactive entities formed before 2020 that hold no assets ✗
- Wholly-owned subsidiaries of most exempt companies ✗
- Commodity Exchange Act registered companies ✗
- Insurance companies and providers ✗
- US federal and state government entities and public utilities ✗
- Pooled investment vehicles ✗
- Sarbanes-Oxley registered public accounting firms ✗

What does a corporation have to do?

A ‘reporting company will be required to file a report that includes:

Legal name	✔
Any trade name or assumed name	✔
Address	✔
Jurisdiction in which it was first formed or registered	✔
Taxpayer identification number	✔

‘Reporting companies’ who are required to submit information under the Act should submit a report containing information about its beneficial owners.

Full legal name	✔
Date of birth	✔
Complete current address	✔
Unique identifying number from an acceptable ID	✔
Image of the ID	✔
FinCEN identifier (if applicable)	✔

Who is a beneficial owner?

The information must be provided for every beneficial owner.

An individual who exercises substantial control over the entity	✔
An individual owns or controls not less than 25 percent of the ownership interests of the entity	✔
A minor	✘
An individual acting as a nominee, intermediary, agent etc	✘
An employee whose control is derived from their employment	✘
An individual whose only interests are through inheritance	✘
A creditor of an entity under the thresholds	✘

What is substantial control?

An individual exercises substantial control over an entity if they meet any of the following criteria:

Serves as a senior officer such as a President, CEO, COO,

- CFO or General Counsel ✅
- Has authority over the appointment or removal of any senior officer or a majority of the board of directors or equivalent ✅
- Directs, determines, or has substantial influence over important decisions made ✅
- Has “any other form of substantial control” ✅

What are the penalties for non-compliance?

Providing false information, or failing to provide or update information, is subject to civil penalties. There is also the possibility of criminal liability for knowingly or willfully providing false information or concealing a material fact to the federal government.

- Fine of $500 a day ✅
- Fines of up to $10,000 ✅
- Up to two years imprisonment ✅

Who can access the beneficial owner information?

Federal agencies involved in national security, intelligence

- and law enforcement ✅
- State and local law enforcement with court authorization ✅
- US Department of the Treasury ✅
- Financial institutions conducting CDD
- Foreign law enforcement who submit a request to the US ✅
- The public ❌
- Someone making an FOI request ❌

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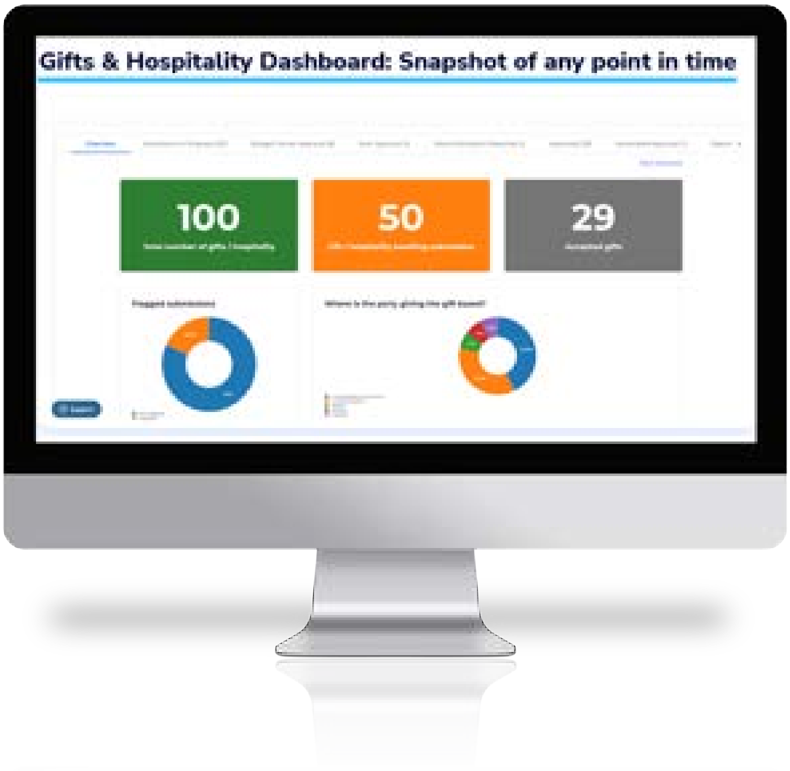

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