

THE AMERICAN LAWYER

# Are Law Firms Ready For The Corporate Transparency Act?

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November 13, 2023

With only a few months remaining before the beginning of a new year and the introduction of new compliance obligations under the Corporate Transparency Act (CTA), many law firms are scrambling to determine how they will assist clients who may be subject to these additional regulations.

In conversations with attorneys, we learned that law firms vary widely in their readiness to address the new CTA regulation for their own firm and their clients.

There is a lot at stake for the estimated 32.6 million corporations, LLCs and other entities that FinCEN expects will be impacted by the new beneficial ownership information (BOI) reporting requirements in the first year the CTA goes into effect, 2024. Qualifying companies that fail to submit beneficial ownership information may be subject to a civil penalty of up to \$500 per day, a criminal fine of up to \$10,000, as well as imprisonment.

### Lack of Awareness In Some Firms

The varying degrees of readiness extend to employee knowledge of the beneficial ownership filing requirements. While some firms have dedicated committees to the planning and directing of new policies and procedures, a number of the attorneys we have spoken to have said they were not familiar with the new BOI reporting requirements.

Still, law firms should be prepared to answer questions that clients may have about CTA, including advising whether or not they may be exempt from the reporting requirement and how they will need to comply.



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### How (And What) to Communicate to Existing Clients

Due to the significant penalties for noncompliance, law firms may decide to notify clients who may be subject to the BOI reporting requirements. (Law firms may also want to contact the ethics committee of their local bar to determine if they have any ethical duty to notify clients).

As for the preferred method for notification, we see that firms are debating a number of options. Some firms are leaning towards written communication, such as email or a hardcopy letter. Others favor notifying clients by phone in order to better address any questions that may arise.

But first, law firms must decide what level of service to provide. Some firms say that they will be helping clients with the initial reporting duties and with ongoing compliance. Other firms, at least for the time being, will be limiting their services to notification of potential filing status and providing information on reporting requirements.

## Managing The Additional Workload

Firms that choose to engage in reporting for clients are also faced with determining who within the organization will be responsible for gathering reporting information and submitting forms to FinCEN.

There is the matter of certifying the accuracy of the information that the law firm will be submitting on the client's behalf. After FinCEN published the Notice of Proposed Rulemaking, the agency received comments regarding the level of due diligence needed to determine the accuracy of the reporting information. As noted in the preamble to FinCEN's final rule establishing beneficial ownership information reporting requirements, "FinCEN does not expect that an inadvertent mistake by a reporting company acting in good faith after diligent inquiry would constitute a willfully false or fraudulent violation." But if there is a change or correction to be made, the reporting company has to file an update within 30 days.

In addition, the sensitive nature of handling personal identifiable information (PII) adds another layer of complexity to the reporting work. John Pachkowski, Senior Legal Analyst, Wolters Kluwer Legal & Regulatory U.S., comments that "law firms will need to evaluate their data security measures, since they will face elevated risk when they assist their clients with submission of their BOI reports and begin to accumulate electronic images of the forms of identification required by the BOI reporting regulation."

While some firms we have spoken to are looking into hiring additional staff to take on these responsibilities, other firms will most likely dedicate existing staff to CTA-related work for the first year.

## Who Will Be The Company Applicant?

Another major concern regarding the process for carrying out the work is deciding who will act as the company applicant. A company applicant is the individual who directly files the document that creates a reporting company and the one who controls the filing, if more than one individual is involved with the filing.

The company applicant will need to submit personal identifying information—including his or her full legal name, date of birth, address, and a unique

identifying number from an approved document (such as a driver's license or U.S. passport)—for each qualifying entity formed or registered on or after January 1, 2024. There will also be the option of applying to FinCEN for a unique identifier (FinCEN ID), which the reporting company can include in the report in lieu of each piece of personal identifying information.

Law firms are discussing whether they should designate paralegals, attorneys, or other individuals within the firm for the role of company applicant. Other firms are looking to avoid having anyone internal take on this role.

## Proceeding With New Entities

Law firms are also considering how they will handle the formation of new entities after the CTA goes into effect on January 1.

Apart from the issue of company applicant, this matter appears to be less complicated when compared to figuring out a firm's obligations to existing clients. For new entities, law firms will be handling those cases individually as they present themselves. Most firms believe that adjusting their current intake process as needed to accommodate the newly required policies and procedures should not be too difficult.

## Next Steps

The CTA impacts domestic and foreign companies across virtually all industries, from retail, construction and professional services to real estate and estate planning. With FinCEN accepting BOI reports starting January 1, 2024, it is critical for firms that manage entity formation for clients, or which may be reporting companies themselves, to have an established plan for handling CTA compliance.

The coming year promises a formidable challenge as firms juggle reporting responsibilities, data security concerns, and decisions such as who will be the company applicant. They may wish to engage a professional services provider as part of their compliance strategy. For more insights on preparing for this new requirement, visit the CTA Resource site.

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