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The New Beneficial Ownership Report Rules: Most Nonprofits Are Exempt from Filing - But Beware of the Exceptions!

By: Steven M. Woolf

[Note: On March 20, 2024, we added an update and clarification to this article, which you can see here.](#)

You may have heard recently about the newly effective “beneficial ownership interest” (BOI) reporting rules put in place by the Corporate Transparency Act (CTA). The CTA is designed to create a robust corporate database at the Treasury Department’s Financial Crimes Enforcement Network (FinCEN) that can be used to target tax evasion, terrorists, money laundering, and other criminal activities often carried out through shell companies. Importantly, **most nonprofit organizations are exempt from the reporting rules**, which makes sense because from a legal point of view most nonprofit organizations do not have “owners,” so there is nothing to report.

What’s all the fuss about the CTA?

Entities required to report (called “[reporting companies](#)”) will soon need to provide basic corporate information, as well as a list of their “beneficial owners” and, in some instances, their incorporators. “Beneficial owners” are defined by the CTA as individuals who own more than 25% of the entity or otherwise exercise substantial control over the entity. Entities created in 2023 or earlier will have all of 2024 to file their reports, which are due by January 1, 2025. Entities created in 2024 generally will have 90 days from corporate formation to file their initial BOI report. Entities created on or after January 1, 2025, will have 30 days to report their BOI. The penalty for noncompliance can be a fine of up to \$591 for each day, up to a \$10,000 maximum.

Which nonprofits are exempt from the CTA BOI rules?

Again, take a deep breath because the CTA BOI reporting requirements ***do not apply to organizations*** that are:

- Defined by section 501(c) of the federal tax code and exempt from federal income tax under Code section 501(a) (***virtually every 501(c)(3), (4), or (5) organization!***);
- Code Section 527 political organizations;
- Code Section 4947(a) charitable trusts;
- Wholly owned subsidiaries of the nonprofits listed above (FinCEN recently clarified that if an exempt entity controls some, but not all, of the ownership interests of the subsidiary, the subsidiary does not qualify for CTA exemption);
or
- Operated exclusively to provide support to any of the nonprofits listed above.

Which nonprofits may need to comply with the CTA?

Nonprofit organizations that lose their tax-exempt status will have 180 days from revocation by the IRS to file a CTA annual report. In many cases, this deadline will generally come before your nonprofit is able to reinstate its tax-exempt status.

In addition, the CTA does not exempt nonprofits with their tax-exempt applications pending at the IRS. The good news for many organizations awaiting tax-exempt status determination is that if the organization was created prior to January 1, 2024, it has one year to comply with the CTA, and it should receive its tax-exempt status determination (and thus exemption from the CTA reporting requirements) before the end of 2024.

One further wrinkle: Nonprofits organized in 2024 have 90 days from the date of creation to file its initial CTA report. But if the organization does not receive its tax-exempt status before the end of the 90-day filing deadline, the organization may be subject to an initial CTA filing report and continue to be subject to the CTA reporting requirements unless and until it receives tax-exempt status from the IRS.

What's the bottom line?

Existing nonprofits with tax-exempt status are generally exempt from the CTA reporting requirements unless they lose their exemption or decide to form a subsidiary or enter into a joint venture with a for-profit entity where the nonprofit does not have total ownership and control. Nonprofits whose tax-exempt statuses are currently pending and nonprofits that are in the early formation stages should review the CTA requirements to ensure compliance as necessary.

For those who want additional information regarding CTA BOI reporting, see:

- [BOI Information Brochure \(fincen.gov\)](https://www.fincen.gov/boi-information-brochure)
- [BOI Small Entity Compliance Guide v1.1 \(fincen.gov\)](https://www.fincen.gov/boi-small-entity-compliance-guide-v1.1)

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of the information contained herein.

Update and Clarification: After we published this article, a federal district court judge in Alabama declared the Corporate Transparency Act (CTA) unconstitutional, ruling that the law's mandatory disclosure requirements exceed Congress' authority. However, the judge limited the scope of the ruling to apply **only to** the plaintiffs in the case. As expected, the federal government filed an appeal to the 11th Circuit Court of Appeals. Most advisers believe it is prudent for companies to continue to comply with the CTA until a final determination is reached to avoid any rushed filings or potential liabilities. For more information, see <https://www.dentons.com/en/insights/alerts/2024/march/14/doj-and-fincen-quickly-appeal-northern-district-ruling-holding-cta-unconstitutional>.

Clarification: In the article we stated the cautious view that organizations with applications pending at the IRS for tax-exempt status under section 501(c)(3) "**may be**" subject to CTA reporting until they receive their tax-exempt status from the IRS. Opinions about the reach of this new provision are mixed, however. Many practitioners believe that IRS exemption **is not needed** before CTA exemption based on 501(c)(3) status can be claimed. For example, see <https://www.afslaw.com/perspectives/alerts/the-nonprofit-sector-need-not-apply-the-corporate-transparency-act-and-its-tax>. Because the statutory language is "ambiguous," some suggest it may be advisable for newly formed 501(c)(3) organizations to take the more cautious position as stated in our article. See <https://www.jdsupra.com/legalnews/corporate-transparency-act-exempts-most-1903550/> ("simply being incorporated as a nonprofit, or having a nonprofit as a co-owner, without more, does not automatically qualify an organization for the CTA exemption").