

## Corporate Transparency Act

This article is NOT intended to provide detailed information about the Corporate Transparency Act (CTA). We try to keep these emails short, yet useful. In order to provide detailed information, including the “what if---?”, “does it apply to---?”, and the many other questions, we would need to make this email several pages long. We know many of our readers have questions on this registration issue, and we suggest you go to the FinCEN website ([fincen.gov](https://fincen.gov)) for more information. The [fincen.gov](https://fincen.gov) web site has very useful FAQs about this. Each FAQ has a date after the answer. This is the date the FAQ was last updated. On September 10, 2024, there were at least three FAQs that were either updated or added.

Those entities required to register are subject to steep penalties for noncompliance if it is willful. The Secretary of the Treasury testified in front of Congress that the penalty only applies if the failure to comply is willful. Only time will tell.

Who has to register? The FAQs go into detail, but basically its every entity that its created under a state’s Secretary of State office. We believe EVERY entity that has LLC, Inc., or Corp as part of its name was created under a state’s Secretary of State office and, therefore, has to do this registration. Limited partnerships and some trusts may also fall under this registration. Again, check out the FAQs.

Entities that belonged to the National Small Business Association (NSBA) on March 1, 2024, are part of a court case which ruled this registration was not legal. Therefore, the government has stated these entities do NOT HAVE TO do this registration, pending the appeal that was filed shortly after this decision. This ONLY includes entities that were members of NSBA on March 1, 2024.

Registration is done strictly electronically and is done at [FinCEN.gov](https://fincen.gov). It opened January 1, 2024. Here are highlights of the rules as we read them.

- 1) Entities in existence prior to January 1, 2024, have to complete this registration no later than January 1, 2025. Of course, many taxpayers will wait until the deadline and that could cause the system to crash, so we are recommending applicable entities do this registration now instead of waiting.
- 2) New entities created on or after January 1, 2024, must register within 30 calendar days of the date of creation. Effective ONLY for entities created during the calendar year 2024, this “30 calendar days” is extended to “90 calendar days.”
- 3) Once a taxpayer has registered with FinCEN, any change in information that has been registered with FinCEN must be reported within 30 calendar days of the change.

### WHAT MUST BE REGISTERED?

An entity created in 2024 or later must register who created the entity and the creator’s address. Often this is an attorney or someone in the attorney’s office.

An entity that existed prior to January 1, 2024, also has to register but it does NOT register information about its creator. If an entity that existed prior to January 1, 2024, tries to enter

the creator, the registration will be rejected. FinCEN doesn't tell the taxpayer why the reject took place, but we discovered the reason was the fact that entries were made in the "creator" screen for an entity that was created prior to January 1, 2024.

Entities must identify the beneficial owners. The main categories of beneficial owners are those who:

- 1) Own or control at least 25% of the ownership of the company, or
- 2) Exercise substantial control over the reporting company.

A beneficial owner that is a minor does not have to register as long as the guardian registers on behalf of the minor.

Entities that terminated during 2024 are still required to register, even entities that both formed and terminated in 2024. (Example, ABC Inc. was created July 1, 2024, and terminated on August 25, 2024. ABC Inc is still required to do the CTA reporting.) (FAQ C.14.) This same FAQ states there is no requirement for such an entity to inform FinCEN that it has ceased to exist.

An entity that is required to register and terminates before the registration takes place is still required to register. The entity should make arrangements to get this accomplished. (FAQ C.15.)

The beneficial ownership portion of the registration is to include those that exist on the date the registration takes place. Any prior beneficial owners that do not exist on the registration date are NOT reported. (FAQ G.4.)

## WILL OUR OFFICE BE DOING THIS REGISTRATION FOR OUR CLIENTS?

Some attorneys have stated doing this for clients is practicing law and therefore restricted to attorneys. Our office is not planning on doing this registration for our clients. We are advising our clients of the requirement to do this registration and advising that they should comply. We prefer to let our clients be adults and keep the responsibility to do this registration and updating.

One reason our office chooses not to do this for our clients is the requirement that the registration information must be updated within 30 days of any change, such as the change of the name, address for the entity, or a change in the name, address, etc. for one of the beneficial owners. This means, we would require clients to inform us of the changes in that time frame or we would have to constantly be asking our applicable clients if there were any applicable changes (such as every 20 days or so, so we have time to make the change on [fincen.gov](https://www.fincen.gov)). If they do not tell us or we did not continuously ask, we could be accused of not fulfilling our responsibilities. Our office would rather not take on the CTA responsibility for our clients.

Originally, we read that a change in the ISSUE DATE of the identification document required notifying FinCEN of such within 30 days of the change. However, this is NOT one of the changes mentioned on the FinCEN website.

WARNING – There are already companies “informing” taxpayers of their registration requirements, including providing a web address, a phone number, and a QR Code to help taxpayers properly register. Beware. These companies are not FinCEN. They may be companies that are offering to “help” taxpayers with their responsibilities, or they may be scammers trying to obtain taxpayer information. FinCEN has this alert on its website:

“Alert: FinCEN has learned of fraudulent attempts to solicit information from individuals and entities who may be subject to reporting requirements under the Corporate Transparency Act.”

So far, we have seen solicitations from:

- United States Business Regulations Department
- United States Department of Records Management
- National Filing Service

These solicitations ask the reader to go to a web site, scan a QR code, or call a phone number. None of these solicitations are truly FinCEN. We recommend that you avoid these fake solicitations.

For more information, we suggest you go to FinCEN and read the FAQs under the BOI information.