

FinCEN Beneficial Ownership Reporting Goes into Effect

As a follow up to our Insight from [November 3, 2022](#), regulations under the Corporate Transparency Act (“CTA”) requiring reporting of beneficial ownership of “reporting entities” went into effect as scheduled on January 1, 2024.

In general, subject to 23 important exceptions, reporting entities are defined broadly to include any domestic corporation, limited liability company, limited partnership or other business entity that is formed by filing a document, such as articles of incorporation or a certificate of formation, with a secretary or state, as well as any foreign business entity that registers to do business with a US state.

All reporting entities that were formed prior to January 1, 2024, must report their beneficial owners to the Treasury Department’s Financial Crimes Enforcement Network (FinCEN) no later than January 1, 2025. Newly formed reporting entities, if formed on or after January 1, 2024, but before January 1, 2025, will have 90 days to report.* Beginning January 1, 2025, newly formed reporting entities will have 30 days to report. Similar deadlines apply to foreign reporting entities that register to do business with a US state or Indian tribe. Changes in beneficial ownership must be reported within 30 days.

Reports must be filed electronically on the FinCEN e-filing website, which is now live. Clients should review all of their existing business entities to determine which ones are required to report. We are happy to assist with the review and to advise on which of your business entities are “reporting entities,” who their beneficial owners are, and their filing obligations generally. However, we are unable to file reports on a reporting entity’s behalf. If it would be helpful, we can connect your reporting entities to a corporate service provider that can assist in filing beneficial ownership reports.

Finally, in light of these new regulations, please note that Milbank personnel no longer are permitted to sign formation documents for new entities, directly file formation documents, or be primarily responsible for directing or controlling the filing. However, we are happy to coordinate with you and corporate service providers in the formation of new entities.

New York LLC Transparency Act Signed into Law But Subject to Forthcoming Changes

On December 22, 2023, New York Governor Kathy Hochul signed legislation known as the LLC Transparency Act. However, according to the governor’s “approval memorandum” that accompanied her signature, the governor signed the legislation “on the basis of [an] agreement” to enact changes designed to protect personal privacy.

* Our prior Client Insight stated that domestic reporting entities formed on or after January 1, 2024, have 30 days to file. Under an amendment to the beneficial ownership reporting regulations issued last November, the deadline has been extended to 90 days for entities formed on or after January 1, 2024, but before January 1, 2025.

In general, as enacted, the LLC Transparency Act is modeled on the federal CTA. However, unlike the federal CTA, the LLC Transparency Act only applies to limited liability companies. Also unlike the federal CTA, the LLC Transparency Act will require beneficial ownership reporting concurrently with formation or an application of authority to do business. Unlike the CTA, which does not require reporting by exempt entities, LLCs that are not reporting entities will be required to state which exemption they are relying on.

As enacted, but prior to the forthcoming amendments, existing entities would be required to report no later than January 1, 2025. Legislation amending the LLC Transparency Act is expected later this year.

2024 Exemption and Exclusion Amounts

Important wealth transfer exclusion and exemptions amounts for 2024 are as follows:

- The annual per donee gift tax exclusion amount is \$18,000 (\$36,000 for a married couple) (increasing from \$17,000 per individual and \$34,000 for a married couple in 2023).
- The lifetime gift and estate tax exemption amount is \$13,610,000 (or \$27,220,000 for a married couple) (increasing from \$12,920,000 per individual and \$25,840,000 for a married couple in 2023), reduced by prior uses of the exemption.
- The generation-skipping transfer (GST) tax exemption is also \$13,610,000 (or \$27,220,000 for a married couple) (increasing from \$12,920,000 per individual and \$25,840,000 for a married couple in 2023), reduced by prior uses of the exemption.
- The New York estate tax exemption amount is \$6,940,000 (increasing from \$6,580,000 in 2023).

Under the Tax Cuts and Jobs Act, the lifetime gift, estate, and GST tax exemption amounts will revert to \$5 million, plus inflation adjustments from 2010, after 2025. Clients should contact us to discuss the use of any remaining exemption amounts before January 1, 2026.

Practice/Group Contacts

New York | 55 Hudson Yards, New York, NY 10001-2163

Austin Bramwell	abramwell@milbank.com	+1 212.530.5466
.....
Jessica Soojian	jsoojian@milbank.com	+1 212.530.5010
.....
James S. Sligar	jsligar@milbank.com	+1 212.530.5839
.....
Sean Imfeld	simfeld@milbank.com	+1 212.530.5322
.....
Yeshim O'Donnell	yodonnell@milbank.com	+1 212.530.5745
.....
Leah Socash	lsocash@milbank.com	+1 212.530.5386
.....
Marceline B. Tempesta	mtempesta@milbank.com	+1 212-530-5887
.....

Amy Albert	aalbert@milbank.com	+1 212.530.5638
Caroline Graif	cgraif@milbank.com	+1 212.530.5332
Katie Lynagh	klynagh@milbank.com	+1 212.530.5435
Elizabeth Pate	epate@milbank.com	+1 212.530.5709
Molly Schiff	mschiff@milbank.com	+1 212.530.5621
Sarina Taylor	staylor@milbank.com	+1 212.530.5080

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