

NEW YEAR, NEW IRS & CORPORATE TRANSPARENCY ACT

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I IS THE CTA CONSTITUTIONAL?



Notice Regarding National Small Business United v. Yellen, No. 5:22-cv-01448 (N.D. Ala.)

Immediate Release: March 04, 2024

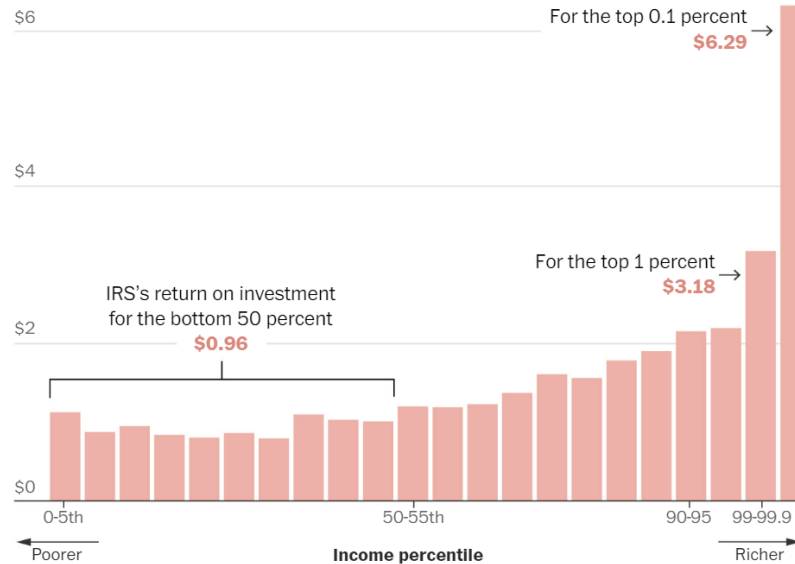
On March 1, 2024, in the case of *National Small Business United v. Yellen*, No. 5:22-cv-01448 (N.D. Ala.), a federal district court in the Northern District of Alabama, Northeastern Division, entered a final declaratory judgment, concluding that the Corporate Transparency Act exceeds the Constitution's limits on Congress's power and enjoining the Department of the Treasury and FinCEN from enforcing the Corporate Transparency Act against the plaintiffs. FinCEN is complying with the court's order and will continue to comply with the court's order for as long as it remains in effect. As a result, the government is not currently enforcing the Corporate Transparency Act against the plaintiffs in that action: Isaac Winkles, reporting companies for which Isaac Winkles is the beneficial owner or applicant, the National Small Business Association, and members of the National Small Business Association (as of March 1, 2024). Those individuals and entities are not required to report beneficial ownership information to FinCEN at this time.

| IRS FUNDING: CURRENT STATUS

\$80 \$60 billion in additional funding through FY2031

For each dollar spent on auditing...

In-person audits, 2010-2014



Source: Boning et al. 2023.

Source: <https://www.washingtonpost.com/opinions/interactive/2023/irs-enforcement-costs-congress-funding/>

I IRS FUNDING: PRIORITIES



High-income
individuals



Large
corporations



Complex
partnerships



None of the increased funding will be used
to increase the audit rates for taxpayers
earning \$400,000 or less annually

I IRS FUNDING: ACTION



- Job announcement [posted](#) for 3,772 **new revenue agents** across 250+ locations with salaries ranging from \$98,000 to \$158,000
 - New agents will be trained to focus on “higher-income and complex tax areas like partnerships”
- Increasing **collection** efforts for taxpayers with income over \$1 million that have more than \$250,000 in outstanding tax debt
 - Recent IRS initiatives focusing on this population reportedly brought in \$500 million from a targeted group of 1,600 taxpayers
 - An estimated 125,000 letters are currently being sent to non-filers with more than \$400,000 in reported income between 2017 and 2021, with collections follow-up planned if no response is received
- IRS will begin employing **artificial intelligence** and other new technologies to better identify trends and potential markers of noncompliance

I IRS FUNDING: ACTION



- IRS to add 60 new audits to its **Large Corporate Compliance** (LCC) program to be selected with the help of AI
 - 150 subsidiaries of large foreign corporations have received or will receive compliance alerts “to reiterate their U.S. tax obligations and incentivize self-correction”
- Formation of a new **Pass-Through Unit** to support increased enforcement and audit coverage of large partnerships and complex arrangements involving pass-throughs
 - IRS to open new audits of 75 of the largest partnerships in the country, including hedge funds, real estate investment partnerships, and publicly traded partnerships
 - Another 500 partnerships have received or should expect to receive “compliance letters” from the IRS
 - The number of large partnerships (i.e., valued over \$100 million) grew 600% between 2002 and 2019, while the audit rate for the same population plummeted to less than 0.5%

I IRS FUNDING: ACTION



- Two most recently identified audit “campaigns” focus on **ultra-wealthy taxpayers**
 - Business Aircraft Campaign addresses compliance concerns related to business aircraft usage by large corporations, large partnerships, and high-income taxpayers
 - Sports Industry Losses Campaign is designed to identify partnerships within the sports industry that report significant tax losses and examine the income and deductions driving those losses
- Continued focus on **tax shelters** and promoters
 - Fraudulent employee retention credit claims
 - Syndicated conservation easements, microcaptive insurance companies
 - Malta pension plans, private placement life insurance
- Other areas identified for additional focus include **digital assets** (where the IRS believes there may be up to a 75% noncompliance rate) and reporting of **foreign assets**
 - Recent hires include the former VP and Global Head of Tax at Binance and former VP of Government Relations at TaxBit

| CORPORATE TRANSPARENCY ACT



FinCEN Estimates:

- 32.6 million existing reporting companies
- 5 million new reporting companies each year

I WHAT DOES TAX HAVE TO DO WITH IT?

- “Officers and employees of the Department of the Treasury may obtain access to beneficial ownership information for **tax administration purposes**”
- “Tax administration” is used as defined in section 6103(b)(4), and thus includes:
 - assessment
 - collection
 - enforcement
 - litigation
 - publication and statistical gathering



I WHAT DOES THE CTA REQUIRE?

Each reporting company shall submit to FinCEN a report that identifies each beneficial owner of the applicable reporting company and each applicant with respect to that company.



I “REPORTING COMPANY”



- The term **reporting company** means a corporation, limited liability company (LLC), or other “similar entity” that is:
 - Created by the filing of a document with a secretary of state or similar office under the law of a State or Indian Tribe - **a domestic reporting company**; or
 - Formed under the law of a foreign country and registered to do business in the U.S. by the filing of a document with a secretary of state or a similar office under the laws of a State or Indian Tribe - **a foreign reporting company**.

I 23 EXEMPTIONS



- Governmental authorities
- Securities issuers (e.g., public companies)
- Banks
- Credit unions
- Bank holding companies
- Money transmitters
- Broker/dealers
- Securities exchanges and clearing agencies
- Other Securities Exchange Act of 1934 registered entities
- Investment companies and advisers
- Venture capital fund advisers
- Insurance companies
- State-licensed insurance producers
- Commodity Exchange Act registered entities
- Public accounting firms
- Public utilities
- Financial market utilities
- Pooled investment vehicles
- Tax exempt entities
- Entities assisting tax exempt entities
- Subsidiaries of certain of the above-named exempt companies

| 23 EXEMPTIONS



Dormant Company

- in existence on or before January 1, 2020
- not engaged in active business
- not owned, directly or indirectly, by a foreign person
- in the previous 12 months, has not experienced an ownership change or sent/received (directly or indirectly) more than \$1,000
- does not hold any assets

Large Operating Company

- employs > 20 full-time employees in the U.S.
- filed a Federal tax return in the previous year with more than \$5M in gross receipts or sales
- has an operating presence at a physical office in the U.S.

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I “BENEFICIAL OWNER”



- The term **beneficial owner** means an individual who, directly or indirectly:
 - Exercises substantial control over the entity; or
 - Owns or controls at least 25% of the ownership interests of the entity
- Does not include non-senior officer employees whose control over or economic benefits from the reporting company are derived solely from their employment status.

I DIRECTLY OR INDIRECTLY



- Through a variety of means including:
 - board representation;
 - ownership or control of a majority of the voting power or voting rights of the reporting company;
 - rights associated with any financing arrangement or interest in a company;
 - control over one or more intermediary entities that separately or collectively exercise substantial control over a reporting company;
 - arrangements or financial or business relationships, whether formal or informal, with other individuals or entities acting as nominees; or
 - *any other contract, arrangement, understanding, relationship, or otherwise.*

I SUBSTANTIAL CONTROL



- Substantial control (*directly or indirectly*) includes:
 - Senior officers of the reporting company (*i.e.*, president, CFO, GC, CEO, COO or similar)
 - Authority to appoint or remove any senior officer or a majority of the board of directors
 - Direction, determination, or substantial influence over important decisions of the reporting company
 - *Any other form of substantial control over the reporting company*

- **Ownership interest** is broadly defined:
 - Interest can be **direct or indirect** (through joint ownership, trust, or control of interest by another individual)
 - Not just stock, voting and non-voting shares, capital or profit interests
 - Any interest convertible into one of the interests described above
 - Any put, call, straddle or other option of buying or selling
 - For trusts, includes:
 - Trustee or other individual with authority to dispose of trust assets
 - Certain beneficiaries
 - Grantors or settlors with right to revoke or withdraw assets

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I APPLICANT



The term **applicant** means the individual who:

- **Directly files** the document that (i) creates a domestic reporting company or (ii) first registers a foreign reporting company; or
- Is **primarily responsible** for directing or controlling such filing (if more than one individual is involved in the filing).

REQUIRED INFORMATION: REPORTING COMPANIES



- The full legal name of the reporting company and any DBA names
- Domestic reporting company:
 - Address of principal place of business
 - State or Tribal jurisdiction of formation
 - IRS TIN (e.g., EIN)
- Foreign reporting company:
 - Address of primary location in the US
 - State or Tribal jurisdiction where first registered in the US
 - IRS TIN, or if no TIN then foreign tax ID number and taxing jurisdiction

REQUIRED INFORMATION: BENEFICIAL OWNERS

- Full legal name
- Date of birth
- Residential street address
- A unique identifying number from one of the following:
 - A non-expired U.S. passport
 - A non-expired U.S. identification document
 - A non-expired U.S. driver's license
 - A non-expired foreign passport (only if no other documents)
- Image of document from which number was obtained

→ Alternative: **FinCEN identifier**



I REQUIRED INFORMATION: APPLICANT

- Full legal name and date of birth
- Current address:
 - **Business**: applicants who file documents in the course of their business may use business street address
 - **Residential**: in any other case, must use residential street address
- Unique identifying number and image of the document from which it came (same list)
- → Alternative: **FinCEN identifier**
- **NOTE**: only required for *new* reporting companies, not those already in existence on January 1, 2024



I REQUIRED REPORTS

Initial Report

- Entity formed during 2024: within **90** days of date of formation
- Entity formed on/after January 1, 2025: within **30** days of date of formation
- Entity formed before January 1, 2024: no later than **January 1, 2025**

Updated Report

- Filed within **30** days of change to previously submitted information
- *E.g.*, reporting company meets criteria for exemption after filing an initial report; beneficial owner dies – updated report to remove deceased beneficial owner, list new beneficial owner(s)

Corrected Report

- Filed within **30** days after reporting company becomes aware or has reason to know that information contained in a report was inaccurate when filed

| PENALTIES



Reporting Violations:

- **Willfully** providing, or attempting to provide, false or fraudulent information to FinCEN (*directly or indirectly*)
- **Willfully** failing to report complete or updated information to FinCEN

Penalties

- Shall pay a civil penalty of up to \$500 per day that the violation continues or has not been remedied; **and**
- May be fined up to \$10,000, imprisoned for up to 2 years, or both

I PERMITTED DISCLOSURES



- FinCEN may disclose beneficial ownership information for limited, specified uses **upon request** through (to be finalized, perhaps this month) protocols:
 - **Federal agencies** engaged in national security, intelligence, or law enforcement activity, *for use in furtherance of such activity*;
 - **State, local and Tribal law enforcement agencies** *for use in criminal or civil investigations*, if authorized by a court of competent jurisdiction;
 - **Foreign law enforcement agencies, prosecutors or judges** *when requested through a Federal agency, and required to comply with a treaty (e.g., an income tax treaty or tax information exchange agreement) or limited to use in an authorized investigation or national security or intelligence activity.*

FinCEN may reject a request for any number of reasons, including “**other good cause.**”

| LESSONS LEARNED...



Filing through FinCEN website manual entry versus PDF upload



Effective use of FinCEN identifiers



Recordkeeping (SAVE EVERYTHING!)



Creating systems for tracking updates



FinCEN FAQs

- **New York LLC Transparency Act** (Effective Dec. 21, 2024)
 - LLCs formed or authorized to do business in New York must file beneficial ownership information with the New York Secretary of State
 - Has the same 23 exemptions to reporting as the CTA
 - Companies that make CTA filings can submit a copy of their CTA filing to the New York Secretary of State, rather than making a separate report, but must specifically claim any reporting exemptions
- Similar “**Transparency Acts**” are being considered in several states:
 - California
 - Maryland
 - Massachusetts
 - New Jersey
 - Rhode Island



QUESTIONS?





THANK YOU

NEW YORK PALO ALTO NEW JERSEY UTAH WASHINGTON, D.C.

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