

Part 2: Addressing and Demystifying Common Denials Surrounding the Upcoming CTA

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CTA Denial #2: “I have a small business. The Corporate Transparency Act only applies to large businesses.”

The CTA’s impact on small businesses is counterintuitive to many business owners, who erroneously believe that their business is “too small” to be within FinCEN’s sights and the CTA’s purview. Quite the opposite: A business’s small size is precisely why such a business must comply with the Act! The Act is designed to cast a broad net to “catch” a small niche of nefarious actors hiding behind the “corporate veil.”

Unfortunately, the vast majority of business entities that now must comply with the CTA, including most small businesses, are unwitting and innocent bycatch in the CTA’s net. This is because they will not be able to meet the criteria to be a large operating company that is expressly excluded from CTA compliance. The CTA’s “large operating company” exception is an exception to the CTA’s reporting requirements for businesses that meet all three of the following criteria:

- (1) The business must have a commercial, physical street address in the United States.
- (2) The business must have twenty-one or more full-time employees (excluding full-time equivalent employees, part-time employees, independent contractors, and leased employees).
- (3) The business must have filed a prior year’s federal income tax filing demonstrating more than \$5 million in annual, U.S.-only, gross receipts or sales.

All home-based businesses, and those with only a virtual (online) presence, will not meet the physical street address part of this three-part test. In addition, by necessity, every business entity formed on or after January 1, 2024, will not initially qualify for this exclusion because such business entities will not have the prior year’s tax return necessary to establish the gross revenue part of the test. The same will be true of virtually all business entities formed between January 1, 2023 and December 31, 2023. Further, many large portfolios of business entities will likely not meet this exception because employees of the portfolio’s operations are typically consolidated into one, or a few, of the portfolio’s business entities, with the remaining business entities not having employees, thus failing the employee prong of the test. Finally, under FinCEN’s BOI Final Rule, employee head count may not

be attributed across affiliated entities for purposes of meeting the employee count threshold—each business entity must stand alone in this respect.

Conclusion

The Corporate Transparency Act is a new beneficial owner reporting requirement in the United States. Beginning January 1, 2024, tens of millions of U.S. business entities, and their beneficial owners, will become subject to FinCEN's new requirements which were originally designed to catch "bad" actors choosing to hide behind the "corporate veil." Whether you like it, hate it, or are indifferent, the CTA is here to stay. Compliance is both mandatory and advisable. Now is the time to discuss this with your legal team for guidance.

Link to [Part 1](#)

Link to [Part 3](#)

Link to [Part 4](#)

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