

# THE CORPORATE TRANSPARENCY ACT: WHAT'S IT GOT TO DO WITH ME?

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## What is the Corporate Transparency Act?

The Corporate Transparency Act is a **new federal reporting law that is projected to impact 32 million reporting companies** in the first year of implementation. The Corporate Transparency Act (CTA) (31 U.S.C. §5336) was enacted into law as part of the Anti-Money Laundering Act of 2020, which is part of the National Defense Authorization Act for Fiscal Year 2021 and establishes federal beneficial ownership reporting requirements for companies created under State laws. The purpose of the CTA is to increase transparency in the U.S. financial system and protect national security interests by combating corruption through illicit financial transactions.

The Financial Crimes Enforcement Network (FinCEN), a bureau of the U.S. Department of Treasury, is the federal agency responsible for implementing the CTA. The rules implementing the beneficial ownership information reporting requirements were published in September 2022 (31 CFR §1010.380) and were effective Jan. 1, 2024.

## What Does the CTA Have to Do With Me?

So you say, what's that got to do with me and my dental practice? The law has cast a broad net to minimize the risk of anonymous, bad actors concealing illicit financial activities through entities with small, opaque ownership structures. As a result, it will impose reporting requirements on many dental practices, including other companies you may own like real estate holding companies.

**A dental practice required to report under the CTA, unless exempted, is any practice that is a corporation; limited liability company; or entity that was created by filing a document with a secretary of state or similar office under the law of a State or Indian tribe (31 CFR §1010.380(c)).** A dental practice that is legally structured as a sole proprietorship is not a reporting entity unless it was created by filing with the secretary of state or similar office. On the other hand, a dental practice that is structured as

a professional service corporation is a corporation that is created by filing a document with the secretary of state or similar State or Tribal office and would therefore be a reporting company under the CTA. Some dental practices that would otherwise be a reporting company may be exempt from the CTA reporting requirements. Examples of potentially applicable exemptions include:

- dental practices or clinics established under the laws of the United States, an Indian Tribe, a State, or a political subdivision of a State, or under an interstate compact between two or more States (31 C.F.R. §1010.380 (c) (2) (ii) (A));
- dental practices or clinics that are tax exempt entities such as 501(c) organizations (31 C.F.R. §1010.380 (c) (2) (xix) (A)); or
- large dental practices that have more than 20 full time employees in the U.S., a physical office within the U.S., and filed a Federal income tax or information return in the U.S. for the previous year demonstrating more than \$5,000,000 in gross receipts (31 C.F.R. §1010.380 (c) (2) (xxi)).

Another exemption that may be applicable is for inactive business entities that have been in existence since at least Jan. 1, 2020, are not engaged in active business, are not owned by a foreign person, have not had changes in ownership in the preceding 12-month period, have not sent or received any funds in an amount greater than \$1,000, and have no assets of any kind or type including ownership interest in any entity (31 C.F.R. §1010.380 (c) (2) (xxiii)).

## What Do I Have to Do to Comply and When?

For dental practices that existed prior to Jan. 1, 2024, the reporting requirements include the personal identifying information for every reportable "beneficial owner". For dental practices that are created after Jan. 1, 2024, the reporting requirements include the personal identifying information for every "applicant" and "beneficial owner".

Regardless of the creation date of the dental practice required to report under the CTA, **it will be essential to determine the beneficial owners of the practice.** A beneficial owner is every individual who, directly or indirectly, either: 1) exercises “substantial control” over the dental practice; or 2) owns or controls at least “25% of the ownership interests” of the dental practice (31 C.F.R. §1010.380 (d)). Substantial control is defined to include senior officers, such as president, chief financial officer, chief executive officer, or chief operating officer; authority over the appointment or removal of any senior officer or a majority of the board of directors; directing, determining, or having substantial influence over important matters including business, finances, and structure; and any other form of substantial control over the reporting company. Ownership interest is defined broadly to include equity, stock, or voting rights; capital or profit interest; convertible instruments; option or privilege; and any other mechanism to establish ownership.

Here’s a few examples of what the reporting considerations and requirements might look like:

- Reporting Company Example 1 is a professional corporation owned (100% of capital/profit interests) and controlled by one dentist (senior officer and decision maker). This one dentist’s information would be reported to FinCEN as the sole beneficial owner based on their ownership interest and substantial control.
- Reporting Company Example 2 is a professional corporation owned by three dentists (50% of capital/profit interest in Dentist A, 40% of capital/profit interest in Dentist B, and 10% of capital/profit interest in Dentist C) and controlled by one dentist (Dentist A serving as senior officer and decision maker). Dentist A is a reportable beneficial owner based on their ownership interest ( $\geq 25\%$ ) and substantial control; Dentist B is a reportable beneficial owner based on their ownership interest ( $\geq 25\%$ ); and Dentist C is not a reportable beneficial owner. Only two of the three dentists’ information would be reported to FinCEN as beneficial owners.
- Reporting Company Example 3 is a professional corporation owned by four dentists (30% of capital/profit interest in each of Dentist A, Dentist B, and Dentist C; and 10% capital/profit interest in Dentist D) and controlled by Dentist D as the CEO/CFO of the practice. Dentists A, B, and C are each a beneficial owner based on their ownership interests ( $\geq 25\%$ ) and Dentist D is a beneficial owner based on their substantial control as a senior officer of the practice. All four dentists’ information would be reported to FinCEN as beneficial owners.
- Reporting Company Example 4 is a professional corporation owned by one dentist (100% of capital/profit interests) that has a management service agreement with another Company (such as a dental support organization). The dentist based on their ownership interest in the professional corporation would be a beneficial owner that would be reported to FinCEN. The Company would not be a beneficial owner of the professional corporation because a beneficial owner must be an individual. Additional analysis of the role of individuals through the Company on behalf of the professional corporation is necessary to determine whether any individual of the Company has direct or indirect substantial control over the professional corporation. For example, does the business agreement give any individual in the Company substantial influence over important business, finance, or structure decisions of the dental practice?
- Reporting Company Example 5 is a dental practice operated as a sole proprietorship and no filing has occurred with any State or Tribal office so no reporting is required. However, this singular dentist also owns the real estate used by the dental practice in a real estate holding company (formed as a limited liability company) owned by the dentist and their spouse each owning a 50% membership interest. The dentist is the manager or managing member of the real estate holding company. Both the dentist and their spouse would be beneficial owners based on ownership  $>$  than 25% each and the dentist would also be a beneficial owner based on their direct and substantial control.

For entities, including dental practices, created after Jan. 1, 2024, up to two, company applicants must be reported. An applicant is an individual who directly files the documents that create or register the company, and in the case where more than one person is involved in the filing, the individual who is primarily responsible for directing or controlling the filing (31 C.F.R. §1010.380 (e)). As a dental practice is created, it will be important to understand who is filing the creation documents. Examples of possible applicants include: 1) the dentist owner; 2) a paralegal who files on behalf of a law firm and the attorney representing the dental practice with primary responsibility for directing the filing; 3) an individual representing a third-party filing agency and the dentist owner with primary responsibility for directing the filing; or 4) an accountant representing the dental practice. It is common practice that dentists request that their attorneys form their entities, whether for their dental practice or real estate

holding company or for any other purpose. In such cases the attorney would then be identified as the applicant. The requirements of the CTA may alter whether or not this common practice continues.

**The personal identifying information for every individual who is a beneficial owner or applicant of the practice must be reported to FinCEN.** This information includes full legal name, date of birth, current residential street address (in some circumstances the current business street address for an applicant), current U.S. passport or driver’s license

number, and an image of the identification document. The dental practice must also report its legal name, any trade or DBA names, current street address (not P.O. Box) of its principal place of business, its jurisdiction of formation or registration, and its taxpayer identification number (31 C.F.R. §1010.380 (b)). **While annual reporting is not required, reported information for a reporting entity and beneficial owners must remain current and updates must be reported within 30 calendars days of the change (31 C.F.R. §1010.380 (a) (2)).** Therefore, it will be important to set up a system for monitoring and reporting changes.

The reporting deadlines vary depending on when the corporation was created:

Date Dental Practice Established	FinCEN Reporting Deadline
Prior to Jan. 1, 2024	Jan. 1, 2025
On or after Jan. 1, 2024 and before Jan. 1, 2025	Within 90 days of receiving actual or public notice that the practice’s creation or registration is effective
On or after Jan. 1, 2025	Within 30 days of receiving actual or public notice that the practice’s creation or registration is effective

## What if I Don’t Comply?

Failure to file and maintain accurate information can lead to the imposition of civil penalties of up to \$500 per day that the violation continues and criminal penalties of up to \$10,000 and up to two years in prison. Enforcement actions can be brought against reporting companies and individuals who fail to report, provide fraudulent information, or cause a company’s failure to submit complete, accurate, or up-to-date information. Penalties can also be imposed for the unauthorized disclosure or use of business ownership information (31 U.S.C. §5336 (h)).

## What Steps Should I Take to Plan for Compliance?

Because of the penalties associated with noncompliance, it is important to factor this new reporting requirement into the establishment and operation of your dental practice and other business entities. As noted previously, business practices that include monitoring and timely reporting of changes need to be developed. Entity documents and agreements should be reviewed and revisions considered to support compliance with the CTA reporting requirements (e.g., beneficial owner compliance obligations, noncompliance resolution processes, delineation of “control” designation). For individuals whose personal information will need to be reported by multiple reporting companies, consideration may be given to the acquisition of a FinCEN identifier

which can substitute for the sharing of personal information to entities except for FinCEN.

This is an overview of the CTA and we recommend you consult your legal/business/accounting advisors to support you in your planning and reporting efforts. Complete information is available at FinCEN’s beneficial ownership information webpage and the FAQs and Small Entity Compliance Guide are particularly helpful.

## Public Policy Perspective

A law this broad has naturally generated controversy over its scope and potential effectiveness in combating money-laundering. Efforts to challenge the law, delay implementation, and extend reporting deadlines had met with limited success.<sup>iii</sup> However, on March 1, 2024, an Alabama federal district court judge ruled that the “Corporate Transparency Act is unconstitutional.”<sup>iv,v</sup> In response, FinCEN added a notice to its website stating “the government is not currently enforcing the Corporate Transparency Act against the plaintiffs in that action ... Those individuals and entities are not required to report beneficial ownership information to FinCEN at this time.”<sup>v</sup> For others, it would suggest that at this time, the reporting requirements and deadlines described above are in effect. However, dental practices that existed prior to Jan. 1, 2024, could consider waiting to report until closer to the deadline (Jan. 1, 2025) and monitoring the outcomes of this case. Those currently engaged in establishing a dental practice (with a 90 day reporting timeline) should seek legal advise on how to proceed in light of this ruling.

For further information contact Chief Operating Officer and General Counsel C. Scott Litch at (773) 938-4759 or [slitch@aapd.org](mailto:slitch@aapd.org).

*This column presents a general informational overview of legal issues. It is intended as general guidance rather than legal advice. It is not a substitute for consultation with your own attorney concerning specific circumstances in your dental practice. Mr. Litch does not provide legal representation to individual AAPD members.*

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*<sup>ii</sup>Beneficial Ownership Information (<https://www.fincen.gov/boi>), FAQ's (<https://www.fincen.gov/boi-faqs>), and Small Entity Compliance Guide [https://www.fincen.gov/sites/default/files/shared/BOI\\_Small\\_Compliance\\_Guide.v1.1-FINAL.pdf](https://www.fincen.gov/sites/default/files/shared/BOI_Small_Compliance_Guide.v1.1-FINAL.pdf).*

*<sup>iii</sup>See for example:*

<https://s-corp.org/2023/12/congress-moves-cta-delay-maybe/>

<https://s-corp.org/2022/11/the-corporate-transparency-act-bad-policy-and-unconstitutional/>

<https://s-corp.org/2024/01/cta-criticism-growing/>

*iv National Small Business United v. Yellen, No. 5:22-cv-1448-LCB, slip op. at 21 (N.D. Ala. Mar. 1, 2024).*

*V Mengqi Sun, Judge Strikes Down Law Requiring Corporate-Ownership Disclosure, The Wall Street Journal, March 4, 2024. <https://www.wsj.com/articles/judge-strikes-down-law-requiring-corporate-ownership-disclosure-e6cf9ec7>*

*vi Notice Regarding National Small Business United v. Yellen, No. 5:22-cv-01448 (N.D. Ala) <https://www.fincen.gov/news/news-releases/notice-regarding-national-small-business-united-v-yellen-no-522-cv-01448-nd-ala>*



## AAPD NOMINATIONS 2024



### **THOMAS G. ISON PRESIDENT-ELECT NOMINEE**

Dr. Thomas G. Ison is owner of a private practice in Newburgh, Ind. He received his dental degree and certificate in pediatric dentistry from the University of Kentucky College of Dentistry and Chandler Medical

Center in Lexington, Ky., and completed a Fellowship in Pediatric Dentistry at Indiana University School of Dentistry. He previously held appointments as assistant professor at the University of Kentucky College of Dentistry and Chief of Dentistry at Norton Children's Hospital, in Louisville. He

is a Fellow of AAPD and Diplomate of the American Board of Pediatric Dentistry. He has served as a consultant to the AAPD Council of Clinical Affairs, and as District III (now Southeastern) Trustee. While Trustee, he was on the Strategic Planning Committee and was liaison to the Council on Dental Benefits and AAPD PAC. He is a past president of the Southeastern Society of Pediatric Dentistry and Kentucky Academy of Pediatric Dentistry. Ison has been an examiner for the ABPD Oral Clinical Exam as well as committee member and part leader for the Renewal of Certification Examination. He resides in Evansville, Ind., with his wife, Connie, and daughter, Maggie.