



# An Update on the NY LLC Transparency Act

## Client Advisories

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The federal Corporate Transparency Act (the "CTA") became effective on January 1, 2024. However, it is not the only legislation requiring the disclosure of a private company's beneficial owners. On December 22, 2023, New York Governor Kathy Hochul signed the New York LLC Transparency Act (the "NYLTA"). On March 1, 2024, she signed a chapter amendment to the same, which amended certain provisions and prescribed final rules for the NYLTA. Among other changes, this amendment postponed the NYLTA's original effective date of December 21, 2024. Now, new LLCs formed or registered after January 1, 2026 must comply with the NYLTA within 30 days of formation/registration and LLCs existing prior to January 1, 2026 must comply by January 1, 2027.

## Similarities Between NYLTA and CTA

The NYLTA is modeled after, and thereby resembles, the CTA in many ways. For example, the NYLTA refers to the definitions of "beneficial owner," "applicant," and "reporting company" under the CTA. It also refers to the definition of "exempt company" and adopts the same 23 exemptions from reporting under the CTA. The beneficial ownership information ("BOI") to be filed with the New York Department of State (the "NYDOS") under the NYLTA is essentially the same, with minor differences, as the information to be filed with FinCEN under the CTA.

## Differences Between NYLTA and CTA

Although there are many similarities between the CTA and the NYLTA, there are some significant differences.

1. **LLCs Only.** One key and obvious difference is the scope of covered entities. The NYLTA applies only to limited liability companies (LLCs) formed or authorized to do business in New York. It does not apply to corporations, limited partnerships, or other types of entities.
2. **Filing by Exempt LLCs.** If an LLC is exempt from reporting under the CTA, it is also exempt under the NYLTA. However, unlike the CTA's automatic exemption, under the NYLTA, an exempt LLC must electronically file an attestation of exemption with the NYDOS, which must include the specific exemption claimed and the facts on which such exemption is based.

3. **Reporting Timeline.** The CTA requires a company to file a BOI report 90 days (for a company formed or registered in 2024) or 30 days (for a company formed or registered on or after January 1, 2025) after formation or authorization to do business. The NYLTA requires an LLC formed or authorized to do business in New York on or after January 1, 2026 (the “Effective Date”) to file a BOI report within 30 days after formation or authorization. LLCs formed or authorized in New York prior to the Effective Date must file BOI reports by January 1, 2027.
4. **Updated or Corrected Reports Timeline.** Notably, the NYLTA has a different updating requirement than the CTA. Under the CTA, an update must be filed within 30 days after any change in information reported to FinCEN about the reporting company or any beneficial owner. The NYLTA does not have such an updating requirement. Instead, the NYLTA requires all reporting companies to file an annual statement to confirm or update (1) beneficial ownership disclosure information; (2) the street address of its principal executive office; (3) status as an exempt company, if applicable; and (4) other information required by the NYDOS. The NYLTA also provides for a 90-day grace period to correct any false or fraudulent BOI, unless the false or fraudulent information was willfully submitted to evade the requirements of the NYLTA. CTA’s grace period for corrected reports is 30 days after becoming aware of or having reason to know of any inaccuracy.
5. **Required BOI.** While the NYLTA requires the disclosure of a beneficial owner’s unique identifying number (e.g., driver’s license number), it does not require a copy of the document (e.g., driver’s license), unlike the CTA, which does require a copy. Unlike the CTA, the NYLTA does not mandate a beneficial owner’s home address; a business address is acceptable. Though the earlier version did not require company applicants to be reported, the updated NYLTA requires LLCs, regardless of whether formed prior to or after the Effective Date, to provide the same information about company applicants as beneficial owners.
6. **Penalties.** The updated NYLTA imposes more severe civil penalties than the original version. Under the NYLTA, an LLC that fails to file its BOI report for over 30 days will be marked as past due and after two years will be marked as delinquent. Presumably, among other things, a past due or delinquent LLC would be unable to obtain a certificate of good standing. More severe civil penalties under the NYLTA may be imposed by the attorney general. The attorney general may fine an LLC up to \$500 for each day it has been past due or delinquent, and may bring an action to dissolve, cancel, or annul the authority to do business against any LLC that is delinquent or that has knowingly provided, or attempted to provide, false or fraudulent BOI. A past due or delinquency status may be remedied by filing a BOI report, paying a civil penalty of \$250, and obtaining verification from the attorney general that any penalties imposed have been paid. The NYLTA does not impose any criminal penalties, while the CTA provides for criminal penalties of up to two years for reporting violations.
7. **Confidential Information.** Information filed under the CTA is confidential and may be shared by FinCEN only with certain law enforcement agencies. Such information is not available to the public nor discoverable under the Freedom of Information Act. The NYLTA, as originally written, would have made certain information in the BOI report publicly available. However, the Governor and the legislature



reached a compromise agreement stipulating that the database should be accessible only to law enforcement agencies. As a result, NYLTA now provides that the BOI will be deemed confidential and maintained in a secure database, and accessible only by written request or voluntary written consent of the beneficial owner, by a court order, by federal, state, or local government agencies under certain circumstances, or for a valid law enforcement purpose.

8. **FinCEN ID.** The current NYLTA neither provides for an equivalent of, nor allows for the use of, a FinCEN ID. Additionally, it has repealed provisions in the earlier version that would have allowed a reporting company to submit a copy of its initial report submitted to FinCEN under the CTA to satisfy its reporting requirements under the NYLTA. Now, all reporting companies must file a BOI report, including personal identifiable information of individuals, with the NYDOS. This may necessitate a more detailed framework for cybersecurity and confidentiality protection for the BOI submitted to NYDOS pursuant to the NYLTA.

We will continue to monitor the NYLTA, as well as the CTA, and report on developments as they arise.

If you have any questions about the New York LLC Transparency Act, please contact **Gianfranco A.**

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