News

Corporate Transparency Act

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The Corporate Transparency Act ("CTA") went into effect on January 1, 2024. Passed by Congress in 2021, the purpose of the CTA is to combat tax fraud, money laundering, human and drug trafficking, and other illegal activities by increasing transparency in entity ownership and control.

The CTA will require certain entities, known as "Reporting Companies," to disclose information about the company itself, its Company Applicants, and its Beneficial Owners to the Financial Crimes Enforcement Network ("FinCEN"). This information, collectively referred to as a Reporting Company's "Beneficial Ownership Information," will be utilized by FinCEN to create a national registry of Beneficial Ownership Information for Reporting Companies. This information will be stored on a secure, nonpublic database and will allow law enforcement to more quickly investigate entities that are suspected of committing certain crimes. The CTA will apply to domestic entities as well as foreign entities that conduct business in the United States.

Is My Entity a Reporting Company for Purposes of the CTA?

A Reporting Company is defined as a corporation, limited liability company, or other similar entity that is: (1) created by filing a document with a secretary of state or a similar office under the law of a State or Indian tribe; or (2) formed under the law of a foreign country and registered to do business in the United States by the filing of a document with the secretary of state or a similar office under the laws of a State or Indian tribe. If an entity qualifies as a Reporting Company, it will be required to disclose its Beneficial Ownership Information unless an applicable exemption applies (as described below).

Reporting Companies likely include limited partnerships, limited liability partnerships, limited liability limited partnerships, and certain business trusts (statutory trusts). Sole proprietorships, general partnerships, and most trusts

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are excluded from the definition of a Reporting Company under the CTA and are unlikely to be required to report.

Entities Exempt from Reporting

The CTA specifically classifies 23 types of entities as exempt from the definition of Reporting Company. These exempt entities do not need to submit their Beneficial Ownership Information to FinCEN. In general, exempt entities are those that are highly regulated and whose ownership information is already available to United States regulators. Some of these exempt entities include:

- Banks, bank holding companies, depository institutions, credit unions, licensed insurance companies, and money transmitting businesses
- Certain regulated public utility companies
- Accounting firms registered under Section 102 of the Sarbanes-Oxley Act of 2002
- Publicly-held issuers that file reports with the Securities and Exchange Commission, including registered broker-dealers, exchanges, clearing agencies, and licensed or registered investment companies
- Commodity pool operators and commodity trading advisors that are registered with the Commodity Future Trading Commission
- Certain tax-exempt entities, including 501(c)(3) organizations
- Large operating companies
- Subsidiaries of certain exempt entities
- Inactive entities

Large Operating Company Exemption

Large operating companies are exempt from filing with FinCEN. Large operating companies are entities that: (1) employ more than 20 employees on a full-time basis; (2) filed in the previous year federal income tax returns demonstrating more than $5,000,000 in gross receipts or sales; and (3) have an operating presence at a physical office within the United States.

Subsidiary Exemption

Entities that are wholly owned or controlled by other exempt entities will themselves be exempt from filing with FinCEN. Significantly, current regulations indicate that an entity must be owned entirely by one or more specified exempt entities to qualify for this exemption. The subsidiary exemption does not extend to subsidiaries of money transmitting or money services businesses, pooled investment vehicles, or entities that assist tax-exempt entities.

Inactive Entity Exemption

The inactive entity exemption applies to entities that: (1) were in existence on or before January 1, 2020; (2) are not engaged in an active business; (3) are not wholly or partially owned, directly or indirectly, by a non-United States person; (4) have not experienced a change in ownership in the prior 12 month period; (5) have not sent or received any funds in an amount greater than $1,000 in the prior 12 month period; and (6) do not otherwise hold any assets, whether inside or outside the United States, including an ownership interest in any corporation, limited liability company, or other similar entity.

Special Rule – Owned by Exempt Entity

If a Beneficial Owner's interest in a Reporting Company is derived through one or more entities, all of which are themselves exempt from reporting, then there is no need to report that Beneficial Owner's Information to FinCEN. The names of all of the exempt entities may be reported instead.

Who Is a Beneficial Owner?

A Beneficial Owner is defined as an individual "who directly or indirectly exercises substantial control over a Reporting Company or owns or controls at least 25 percent of the ownership interests of a Reporting Company."

a. What Does it Mean to Have Substantial Control?

Individuals with substantial control include:

- Senior officers of a Reporting Company, which includes "any individual holding the position or exercising the authority of a president, chief financial officer, general counsel, chief executive officer, chief operating officer, or any other officer, regardless of official title, who performs a similar function";
- Those persons with authority over the appointment or removal of any senior officer or a majority of the board of directors (or similar body);
- Individuals who exercise authority over significant business decisions, such as: selecting or terminating business lines; approving significant contracts; authorizing major expenditures or investments; approving business reorganizations, dissolutions, mergers, sales, or amending governance documents; and
- Any other person who exercises substantial control over the Reporting Company (catchall category).

b. What Does it Mean to Have a 25 Percent Ownership Interest in a Reporting Company?

The definition of “ownership interests” is broadly defined and includes an individual’s interests in stock or voting rights, equity, options, capital or profit interests, convertible instruments, or any other instrument, contract, or mechanism used to demonstrate ownership.

Trusts

If a trust owns 25 percent or more or exercises substantial control of a Reporting Company, it will be required to disclose the Beneficial Ownership Information for: (1) the trustee or any other individual with the authority to dispose of trust assets; (2) a beneficiary who is the sole permissible recipient of income and principal, or someone who has the right to withdraw substantially all of the assets from the trust; and (3) a grantor or settlor who has the right to revoke the trust or otherwise withdraw assets of the trust.

Those Exempt as a Beneficial Owner

The following individuals are typically exempt as Beneficial Owners and do not need to report their personal information to FinCEN:

(1) individuals younger than the age of 18 so long as the information of a parent or legal guardian is reported instead;

(2) those acting on behalf of another individual, such as nominees, intermediaries, custodians, or agents;

(3) employees of a Reporting Company who are not considered senior officers and who do not derive economic benefit from the company apart from their employment status;

(4) individuals whose interest in the Reporting Company is based on a future interest by means of a right of inheritance; and

(5) creditors of the Reporting Company so long as the creditor does not exercise substantial control over the entity, or own or control at least 25 percent of the ownership interests in the company.

Who Is a Company Applicant?

Reporting Companies formed after January 1, 2024, need to report certain personal information about their Company Applicants to FinCEN. Reporting Companies formed prior to January 1, 2024, are not required to provide such information.

A Company Applicant is (1) the individual who directly files the formation or registration documents with the secretary of state or similar office and (2) the individual who is primarily responsible for directing, controlling, or overseeing such filing. A Reporting Company can have no more than 2 Company Applicants.

What Information Must Be Reported?

A Reporting Company must provide:

- its name, or any names through which it engages in business, including any trade names or any doing business as names;
- its business street address (which cannot be a P.O. Box);
- the jurisdiction of formation or registration; and
- its tax identification number.

Beneficial Owners must provide:

- their full name;
- their date of birth;
- their residential or business address; and
- an identifying number from an acceptable identification document, such as a passport or driver's license, along with a photograph of that document.

Company Applicants of Reporting Companies must report the same information as Beneficial Owners.

When and How to Report

- Reporting Companies that exist prior to January 1, 2024, will have one year to file with FinCEN.
- Any Reporting Company created on or after January 1, 2024, will have 90 days after receiving notice of the Company's formation or registration to file its Beneficial Ownership Information.
- Reporting Companies created on or after January 1, 2025, will only have 30 days to file.
- Any changes to a Reporting Company's Beneficial Ownership Information must be reported to FinCEN within 30 days.

All Beneficial Ownership Information must be filed electronically through FinCEN's secure filing system.

FinCEN Identifier Number

Individuals can apply for a FinCEN identifier, which is a unique number issued to either individuals or Reporting Companies. A FinCEN identifier can be used for frequent filers and can be provided in lieu of a Beneficial Owner's or Company Applicant's personal information.

Who Can Access Beneficial Ownership Information?

Federal, state, local, and tribal officials, as well as certain foreign officials upon request will be able to access a Reporting Company's Beneficial Ownership Information.

Penalties for Failure to Report

FinCEN may impose civil and criminal penalties against a Reporting Company if it fails to report its Beneficial Ownership Information. Civil and criminal penalties will also apply against a Company Applicant and Beneficial Owner if an individual willfully reports false Beneficial Ownership Information or willfully fails to correct or update previously reported Beneficial Ownership Information. Civil penalties include fines of $500 for each day that the violation continues (subject to annual inflation adjustments). Criminal penalties include potential fines of up to $10,000 and imprisonment for up to 2 years.

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