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# **The Corporate Transparency Act: What Businesses Need to Know About FinCEN's Final Beneficial Ownership Information Rules**

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# Disclaimer

*The following presentation does not represent legal advice. If you have specific questions concerning specific circumstances, please consult your attorney.*

# Summary

The Corporate Transparency Act (“CTA”) requires certain business entities (each defined as a “reporting company”) to file, in the absence of an exemption, information on their “beneficial owners” with the Financial Crimes Enforcement Network (“FinCEN”) of the U.S. Department of Treasury (“Treasury”). The information will not be publicly available, but FinCEN is authorized to disclose the information to certain agencies and other entities/persons.

# Final Reporting Rule

FinCEN issued a final rule implementing the CTA's BOI reporting provisions on September 29, 2022.

The effective date for the BOI reporting requirements under the CTA take effect on **January 1, 2024**.

# Overview

- Reasoning and Background of CTA
- Components of CTA
  - What is a “Reporting Company”
  - Who is a “Beneficial Owner”
  - Who is a “Company Applicant”
  - What Information is Required to be Reported
- When is Information Required to be Reported
- Who can use/access Beneficial Ownership Information
- Penalties for Noncompliance

# Reasoning and Background Corporate Transparency Act



# Reasoning for CTA

- More than 2,000,000 corporations and limited liability companies being formed in U.S. each year
- “Shell Companies” (e.g. Panama Papers, Russian nesting dolls)
- Needed by law enforcement and national security agencies
- Most States do not require or maintain entity ownership information



# Background

- Financial Action Task Force (2006)
- Incorporation Transparency and Law Enforcement Assistance Act (2008)
- Closing Loopholes Against Money-Laundering Practices Act (2016)
- True Incorporation Transparency for Law Enforcement Act (2017)
- Counter Terrorism and Illicit Finance Act (2018)
- Corporate Transparency Act (2017, 2019)
- FinCen CDD Requirements



# Background

- CTA enacted January 1, 2021
- FinCEN issued Advance Notice of Proposed Rulemaking on April 2, 2021
- Notice of Proposed Rulemaking (NPRM) issued December 8, 2021
- FinCEN issued final rule on September 29, 2022
- Effective date for the BOI reporting requirements is **January 1, 2024**.
  - Additional rule makings:
    - Rules for access to BOI
    - Revise FinCEN's customer due diligence rule

# Components of Corporate Transparency Act

# Components of CTA

- What is a “Reporting Company”
- Who is a “Beneficial Owner”
- Who is a “Company Applicant”
- What Information is Required to be Reported



# What is a Reporting Company

A corporation, limited liability company, or **other entity** that is:

- (i) created by the filing of a document with the secretary of state or similar office under the laws of a state or Indian tribe; or
- (ii) 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 similar office under the laws of a state or Indian tribe.



# What is **NOT** a Reporting Company

*20+ types of entities expressly excluded from the definition of “reporting company”*

## **Notable Exemptions**

- Many financial services companies including banks, credit unions, and certain accounting firms
- Several types of 501c organizations including churches, nonprofit organizations, and charities
- Publicly traded companies
- Large private companies
- Subsidiaries of an excluded company



# Large Private Company Exemption

1. employs more than 20 employees on a full-time basis in the United States;
  - Anyone employed an average of at least 30 service hours per week or 130 service hours per month, with adaptations for non-hourly employees (aligns with ACA)
  - Exempt entity must be employer; may not consolidate employees across affiliated entities
2. filed in the previous year federal income tax returns in the United States demonstrating more than \$5 million in gross receipts or sales in the aggregate; and
  - Gross receipts or sales as reported on federal income tax or information return, **BUT** excluding gross receipts or sales from sources outside the United States
  - An entity that is part of an affiliated group of corporations that filed a consolidated return must use the amount reported on the consolidated return for the group.
3. has an operating presence at a physical office in the United States
  - Physical office, owned or leased by the entity and is not shared space (other than with affiliates)

# Subsidiary Exemption

Any corporation, limited liability company, or other similar entity of which the ownership interests are “owned or controlled,” directly or indirectly, by one or more exempt entities.

Final Rule: Subsidiary must be wholly owned by one or more exempt entities. However, control is not defined.

# Nonprofit Exemption

The entity is an organization that is described in section 501(c) of the Internal Revenue Code of 1986 (Code) (determined without regard to section 508(a) of the Code) and exempt from tax under section 501(a) of the Code.

There will likely be a period of time where a newly formed nonprofit will need to report until they received tax exempt status from the IRS (unless able to file 1023EZ).



# List of Exempt Entities

1. an issuer of securities registered under Section 12 of the Securities Exchange Act of 1934 (the “Exchange Act”) or that is required to file supplementary and periodic information under Section 15(d) of the Exchange Act
2. an entity established under the laws of the United States, a state, or a political subdivision of a state, or under an interstate compact between two or more states and that exercises governmental authority on behalf of the United States or any such state or political subdivision
3. a “bank,” as defined in either (i) Section 3 of the Federal Deposit Insurance Act, (ii) Section 2(a) of the Investment Company Act of 1940, or (iii) Section 202(a) of the Investment Advisors Act of 1940
4. a federal credit union or state credit union
5. a bank holding company (as defined in Section 2 of the Bank Holding Company Act of 1956) or a savings and loan holding company (as defined in Section 10(a) of the Home Owners Loan Act)
6. a money transmitting business registered with the Secretary of the Treasury under section 5330
7. a broker or dealer registered under Section 15 of the Exchange Act
8. an exchange or clearing agency registered under Section 6 or Section 17A of the Exchange Act

# List of Exempt Entities

9. any other entity registered with the Securities and Exchange Commission (the “SEC”) under the Exchange Act
10. an entity that is either an investment company (as defined in Section 3 of the Investment Company Act of 1940) or an investment adviser (as defined in Section 202 of the Investment Advisers Act of 1940), in each case that is registered with the SEC under such acts
11. an investment adviser described in Section 203(l) of the Investment Advisers Act that has filed Item 10, Schedule A, and Schedule B of Part 1A of Form ADV, or any successor thereto, with the SEC
12. an insurance company (as defined in Section 2 of the Investment Company Act)
13. an insurance producer that is authorized by a state and subject to supervision by the insurance commissioner or a similar official or agency of a state and has an operating presence at a physical office within the United States
14. entities registered with the Commodity Futures Trading Commission under the Commodity Exchange Act
15. a public accounting firm registered in accordance with Section 102 of the Sarbanes-Oxley Act of 2002
16. a public utility that provides telecommunication services, electrical power, natural gas, or water and sewer services within the United States

# List of Exempt Entities

17. a financial market utility designated by the Financial Stability Oversight Council
18. any pooled investment vehicle that is “operated or advised” by a bank, federal credit union or state credit union, registered broker or dealer, or investment company or investment adviser, in each case that is otherwise exempted as a reporting company
19. a tax-exempt Section 501(c) corporation, political organization, charitable trust or split-interest trust exempt from tax
20. corporations, limited liability companies or other similar entities that operate exclusively to provide financial assistance to, or hold governance rights over, tax-exempt Section 501(c) corporations, political organizations, charitable trusts or split-interest trusts exempt from taxation
21. an entity that (i) employs more than 20 employees on a full-time basis in the United States, (ii) filed in the previous year federal income tax returns in the United States demonstrating more than \$5 million in gross receipts or sales in the aggregate, including (a) other entities owned by the entity and (b) other entities through which the entity operates, and (iii) has an operating presence at a physical office in the United States

# List of Exempt Entities

22. a corporation, limited liability company or other similar entity of which the ownership interests are owned or controlled, directly or indirectly, by one or more aforementioned exempt entities (“exempt subsidiaries”)
23. a corporation, limited liability company or other similar entity: (i) in existence for over one year; (ii) that has not engaged in active business; (iii) that is not owned, directly or indirectly, by a foreign person; (iv) that has not, in the preceding 12-month period, experienced a change in ownership or sent or received funds in an amount greater than \$1,000; and (v) that does not otherwise hold any kind or type of assets, including an ownership interest in any corporation, limited liability company or other similar entity (an “exempt grandfathered entity”)
24. any entity or class of entities that the Secretary of the Treasury has determined by regulation, with the written concurrence of the Attorney General of the United States and the Secretary of Homeland Security, should be exempt because requiring beneficial ownership information would not serve the public interest and would not be highly useful in national security, intelligence and law enforcement efforts to detect, prevent or prosecute money laundering, the financing of terrorism, proliferation finance, serious tax fraud or other crimes

# Who is a Beneficial Owner

“Beneficial Owner” means, with respect to an entity, an individual who, directly or indirectly, through any contract, arrangement, understanding, relationship, or otherwise:

- (i) exercises substantial control over the entity; **or**
  - “Indicators”:
    - Senior officers (President, C-Suite, GC or similar officers)
    - Authority over appointment or removal of a senior officer or majority of directors (or similar body)
    - Direction, determination, or decision of, or substantial influence over, important matters of the reporting company (catch-all provision)
- (ii) owns or controls, **directly or indirectly**, not less than 25 percent of the ownership interests of the entity.
  - Covers all ownership interests of any class or type (including warrants, rights, options and profits interests)
  - Debt instruments included if they enable the holder to exercise the same rights as one of the specified equity or other interests, including the ability to convert the instrument into one of the specified equity or other interests

# Special Ownership Rules for Trusts

If an ownership interest in a reporting company is held through a trust, these individuals are deemed to have an ownership interest in the reporting company:

- A trustee of the trust or other individual (if any) with the authority to dispose of trust assets.
- A beneficiary who:
  - is the sole permissible recipient of the trust's income and principal; or
  - has the right to demand a distribution of or withdraw substantially all of the trust's assets.
- A grantor or settlor who has the right to revoke the trust or otherwise withdraw the trust's assets.

# Who is NOT a Beneficial Owner

1. a minor child as defined in the state in which the entity is formed (**must report information of the parent or guardian of the minor child**);
2. an individual acting as a nominee, intermediary, custodian, or agent on behalf of another individual (**must report information of individual whom nominee is acting**);
3. an individual acting solely as an employee of a reporting person and whose control over the economic benefits from such entity is derived solely from the employment status of the person (**excludes “senior officers”**);
4. an individual whose only interest in a reporting company is through a right of inheritance;  
or
5. a creditor of a reporting person, unless the creditor meets the requirements of a “beneficial owner” based on substantial control or ownership or control of not less than 25% of the ownership interests



# Who is a Company Applicant

A company applicant is an individual who either:

- Directly files the document that creates a domestic reporting company or first registers a foreign entity to do business in the US.; or
- Is primarily responsible for directing or controlling the filing of the relevant document by another, **if more than one individual is involved in the filing.**





# What Information is Required to be Reported

Reporting Company must report the following information for each Beneficial Owner and each Company Applicant\*:

1. full legal name;
2. date of birth;
3. current, as of the date on which the report is delivered, address;
4. the unique identifying number from an acceptable identification document or a FinCEN identifier issued in accordance with the CTA; and
5. image of the identification document used to provide unique identification document.

\* Reporting Companies formed before Effective Date do not need to report Company Applicant information, and no Reporting Company needs to update Company Applicant information.

# What Information is Required to be Reported

Information that must be reported about the Reporting Company:

1. Legal name (and any trade names);
2. Address of principal place of business (can't be PO Box or office of formation/registered agent);
3. State/jurisdiction of formation; and
4. IRS taxpayer identification number.



# What Information is Required to be Reported

- Reporting Company owned by exempt entity:
  - With respect to the exempt entity, only need to list the name of the exempt entity.
- Exempt entity reporting?

# When is Information Required to be Reported

# When is Information Required to be Reported

## *Initial Reporting Requirements:*

- For any reporting company that has been formed or registered **before the effective date** of the Treasury regulations: *not later than 1 year after the effective date of Treasury regulations (January 1, 2025)*
- For any reporting company formed or registered **after the effective date** of the Treasury regulations: *not later than 30 days after formation*

# When is Information Required to be Reported

## *Updating Reporting Requirements:*

- Reporting Companies must update changes in Beneficial Ownership *not later than 30 days after change*
- Exempt entities required to submit to FinCEN the required beneficial ownership report *not later than 30 days after exemption ceases*

# Use/Access of Beneficial Ownership Information



# Who Can Use/Access Beneficial Ownership Information?

- Federal agencies engaged in national security or law enforcement
- State, local and tribal law enforcement
- Foreign law enforcement
- Financial institutions subject to CDD rules
- Treasury Department and other regulatory agencies



# Penalties for Noncompliance



# Penalties for Noncompliance

- Civil penalties of up to \$500 for each day that a violation continues or has not been remedied; and
- Fines of up to \$10,000 and possible imprisonment of up to two years for any person who willfully (i) provides, or attempts to provide, false or fraudulent beneficial ownership information or (ii) fails to report complete or updated beneficial ownership information to FinCEN.
- Civil and criminal penalties for unauthorized use of BOI reported to FinCEN

# Resources

- Small Entity Compliance Guide  
(<https://www.fincen.gov/boi/small-entity-compliance-guide>)
- Beneficial Ownership Information FAQs  
(<https://www.fincen.gov/boi-faqs>)



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Questions



Thank  
You

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