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Corporate Transparency Act Will Require New Layer of Compliance for Private Companies



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Corporate

A vast number of private businesses will face new requirements on how – and whether – they report their beneficial ownership interests to the U.S. government, effective at the start of 2024. While the time for compliance starts in several months, the time to prepare is now.

The new federal Corporate Transparency Act (CTA), passed in 2021 with rules finalized in 2022, requires a host of new and existing companies doing business in the United States to report their beneficial ownership information to the Financial Crimes Enforcement Network (FCEN), which is part of the U.S. Department of Treasury. According to FCEN (www.fincen.gov), these new regulations will allow “law enforcement, national security agencies, and others to help prevent criminals, terrorists, proliferators, and corrupt oligarchs from hiding illicit money or other property in the United States.”

Certain types of private businesses will be exempt, often because they face other similar reporting requirements, and smaller companies, determined by number of employees or annual revenues, will also not need to report.

Following is an overview of the CTA's requirements, from timing and definitions, as well as its penalties for noncompliance. We also will review what information needs to be reported. Finally, we will review the exemptions to the CTA's reporting requirements.

What CTA Requires

Starting January 1, 2024, a “**Reporting Company**” must report its “**Beneficial Owners**” and “**Applicants**” to FCEN within 30 days after the Reporting Company's formation or registration to do business in the US, and ongoing updates within 30 days after changes to Beneficial Owners or 30 days after becoming aware.

Timing for Compliance:

- Reporting Companies created **before January 1, 2024, will have one year (ending January 1, 2025)** to file their initial reports.
- Reporting Companies created **after January 1, 2024, will have 30 days** from formation to file their initial reports.

What is a “Reporting Company”: Any entity with **either** less than **20 full-time employees** in the United States **or** less than **\$5 million in U.S.-based revenue** as reported on its most recent federal tax return, unless exempt, typically because of a pre-existing obligation to report Beneficial Owners (i.e., there are 23 exemption categories but almost all require the entity to have some separate obligation to report its ownership or control to the government such as public companies, banks, broker-dealers, insurance companies, utilities, etc).

Who is a “Beneficial Owner”: Each **25% equity owners** and any others with **Substantial Control** over the Reporting Company, such as a senior officer.

“Substantial Control” is very broad and means, any of the following:

- serving as a senior officer of the Reporting Company,
- having control over the appointment or removal of a senior officer or a majority of the board of directors (or similar governing body)
- directing, determining or having substantial influence over important decisions made by the Reporting Company, including (without limitation)
 - the nature, scope and attributes of the business, including the sale, lease, mortgage or other transfer of any principal assets;
 - selection or termination of business lines or ventures, or the geographic focus of the Reporting Company;
 - compensation schemes and incentive plans for senior officers;
 - fulfillment or non-fulfillment of significant contracts. reorganization, dissolution or merger; OR
 - **or any other form of substantial control** over the Reporting Company.

“Applicant” means **both (1)** the individual who directly files the document that creates the Reporting Company or registers it in a U.S. jurisdiction; **and (2)** the individual who is primarily responsible for directing or controlling such filing. (87 Fed. Reg. 59536 (Sept. 30, 2022))

Information to be Reported: FCEN has not yet created the specific reporting forms, but Reporting Companies will need to report.

Reporting Company Information to Be Reported

1. **The full name** of the Reporting Company;
2. **Any trade name** or “doing business as” name;
3. **The business street address** of the reporting company
4. **Principal place of business** in the U.S. or primary location in the US
 - For a Domestic Reporting Company, the State or Tribal jurisdiction of formation; or
 - For a Foreign Reporting Company, State, or Tribal jurisdiction where such company first registers.

The IRS Taxpayer Identification Number (TIN) (including an EIN of the reporting company, or where a reporting company has not yet been issued a TIN, one of the following: (1) Dun & Bradstreet Data Universal Numbering System (DUNS) number; or (2) Legal Entity Identifier (LEI).

Beneficial Owner and Applicant Information to Be Reported

1. **Full legal name** of the individual
2. **Date of birth** of the individual
3. **Complete current address**
 1. **Residential Address** for each **Beneficial Owner**
 2. **Business Address** for each **Applicant**
4. **ID showing Identifying Number and Issuing Jurisdiction**, such as
 1. A non-expired passport (U.S. or Foreign)
 2. A non-expired ID issued by a government entity (e.g. driver’s license).
5. **An Image of the ID** from which the ID number was obtained.

What Companies Are Exempt From CTA Reporting Requirements

The exemptions most likely to be useful to most businesses are:

1. Large Reporting Company Exemption (must fit all criteria below)

- An entity with more than 20 full time employees
- Has an operating presence at a physical office in the United States
- Filed a federal income tax or information return in the United States for the previous year showing more than \$5 million in gross receipts, excluding gross receipts or sales outside the United States.
- **For Entities in an Affiliated Group that filed a Consolidated Return (per 26 U.S.C. 1504)**, the applicable amount is the amount reported on the consolidated return for such group.

Take Away: Most small businesses, special purpose vehicles and single member entities used for investment or advisory are Reporting Companies.

2. Venture Capital Advisor Exemption: An Investment adviser that

- Is described in 15 U.S.C. 80b-3(l), which is the venture capital adviser exemption to the registration requirements of Investment Advisers Act of 1940); and
- Has filed Item 10, Schedule A and Schedule B of Part 1A of Form ADV, which are the forms required to be filed by Exempt Reporting Advisors.

Take Away: Exempt Reporting Advisers are Reporting Companies unless they fit the Venture Capital Adviser exemption or another exemption.

3. **A Reporting Company owned by an Exempt Entity can report the Exempt Entity's Information:** If an individual is a Beneficial Owner of a Reporting Company solely because that individual owns an interest in an exempt entity that is an owner of the Reporting Company, **the Exempt Entity's Information can be reported in lieu of the individual's beneficial ownership information.**

4. **Trust Beneficial Owner Reporting:**

- **For irrevocable trusts with multiple beneficiaries**, the Trustee's information is the beneficial owner information that must be reported.
- **For trusts for which there is only one beneficiary, or the beneficiary retains the right to demand a distribution of substantially all the assets of the trust**, the beneficiary's information must be reported.
- **For trusts for which the grantor or settlor has the right to revoke the trust or withdraw the assets**, the grantor or settlor's information is the beneficial ownership information that must be reported.

Note: If the trust beneficiary exercises substantial control via separate means, such as by being a senior officer, executive or director of the Reporting Company, that trust beneficiary's information may still have to be reported as a beneficial owner

Full List of Exemptions

In general, the following entities are exempt from the definition of "Reporting Company" and will not be required to comply with the CTA's beneficial owner and applicant reporting requirements.

1. **Public Companies:** Issuers of securities that are registered or are required to file under the 1934 Securities Act.
2. **Governmental authority entities.**

3. **Banks**, as defined in the Federal Deposit Insurance Act, the Investment Company Act or the Investment Advisers Act.
4. **Credit unions** as defined in the Federal Credit Union Act.
5. **Bank holding companies** as defined in the Bank Holding Company Act.
6. **Money transmitter businesses** registered with the Secretary of Treasury.
7. **Broker dealers** registered under the 1934 Securities Act.
8. **Exchange or clearing agencies** as defined under the 1934 Securities Act.
9. **Other entities not previously described but that is registered with the Securities and Exchange Commission** under the 1934 Securities Act.
10. **Investment companies and investment advisers.**
11. **Venture Capital Fund Advisers who file Section A and B of Part 1A of Form ADV.**
12. **Insurance Companies:** Insurance companies as defined under the Investment Company Act.
13. **Insurance producers** with operating physical presence in the United States.
14. **Entities registered under the Commodity Exchange Act.**
15. **Public accounting firms registered under Sarbanes-Oxley .**
16. **Public utilities.**
17. **Financial market utilities** designated under the Financial Stability Oversight Council.
18. **Pooled investment vehicles operated or advised** under #3 (Banks), #4 (Credit Unions), #7 (Broker Dealers), #10, (Investment Companies) or #11 (Investment Advisers).
19. **Non-profits, political organizations, and trusts as defined under the Internal Revenue Code.**
20. **Entities that provide financial assistance or hold governance rights over entities in #19 (non-profits, political organizations and trusts as defined in the Internal Revenue Code), and which:**
 - Are U.S. persons;
 - Are beneficially owned or controlled exclusively by 1 or more U.S. persons that are U.S. citizens or permanent residents (green card); and
 - That derives at least a majority of its funding or revenue from one or more U.S. persons that are U.S. citizens or lawfully admitted for permanent residence.
21. **Large Operating Companies: Entities that:**
 - (A): Employ more than **20 Full Time Employees** in the United States,
 - (B): Has an operating presence at a physical office within the United States; and
 - **U.S. Office Requirement:** must be owned or leased by the reporting company; is not a residence; is not a shared space. "A genuine working office of the entity."
 - (C): Filed a federal income tax or information return in the United States in the previous year demonstrating more than \$5 million in gross receipts or sales (net of returns and allowances).
22. **Subsidiaries of Certain Exempt Entities:**
 - Any corporation, LLC or other similar entity which ownership interests are owned or controlled, directly or indirectly, by 1 or more entities described in #1 #2, #3, #4, #5, #7, #8, #9, #10, #11, #12, #13, #14, #15, #16, #17, #19 (**Basically any entity already registered with the federal government**) or #21 (**Large Reporting Companies**).
23. **Inactive Entity: an entity that was in existence on or before January 1, 2020; and**
 - is not engaged in an active business,

- is not owned by a foreign person, directly or indirectly, wholly or partially;
- has not experienced any change in ownership in the preceding 12 months; **and**
- Does not hold any kind or type of assets.

See 87 Fed. Reg. 59539-45 (Sept. 30, 2022)

If you have questions or would like more information about the Corporate Transparency Act, please contact a member of Gould & Ratner's [Corporate Practice](#).