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# Are you ready for new reporting requirements under the Corporate Transparency Act?

The Corporate Transparency Act (CTA) may soon require many U.S. and foreign legal entities operating in the United States to report information about themselves and their beneficial owners to a registry maintained by the U.S. Treasury Department's Financial Crimes Enforcement Network (FinCEN). If you are the beneficial owner of a legal entity (through ownership or control), you should determine whether such entity will be subject to reporting when the requirements of the CTA are scheduled to become effective on January 1, 2024.

FinCEN issued regulations implementing some elements of the CTA in September 2022, including what constitutes a "reporting company" and "beneficial owner," and what information must be reported about beneficial owners. Although the CTA exempts certain corporate entities from reporting, such as regulated entities, "large operating companies," and some tax exempt entities, many companies will not be exempt. Understanding the requirements of the CTA's regulations is important to ensure timely and complete reporting to FinCEN.

The regulations are technical and subject to additional guidance, which FinCEN began to provide through its [Frequently Asked Questions \("FAQs"\)](#). While these FAQs and FinCEN's [Beneficial Ownership Information Reporting Home Page](#) provide the authoritative responses to these questions and more, the following questions may also be considered by individuals who may own or control potential "reporting companies."

## Q: Who is subject to CTA reporting?

A: Generally, "reporting companies" will include non-exempt U.S. corporations, limited liability companies (LLCs), or other entities that are created by filing a document with a secretary of state or any similar office under the law of a U.S. state or Indian tribe. They will also include non-exempt foreign entities that are registered to do business in any U.S. state or Tribal jurisdiction. For this purpose, a "state" includes the District of Columbia and any commonwealth, territory or possession of the United States. Domestic and foreign reporting companies that are not explicitly exempt from these requirements will be required to report their beneficial ownership information to FinCEN.

## Q: Who is exempt from CTA reporting?

A: There are currently 23 types of exempt entities. Examples of exempt entities under the rule include certain types of regulated entities, large operating companies,<sup>1</sup> pooled investment vehicles, tax-exempt entities and the subsidiaries of some exempt entities. These types may include, for example, investment advisors registered with the U.S. Securities and Exchange Commission, and public charities or private foundations described in Section 501(c) of the U.S. Internal Revenue Code, among others. The exemptions are very specific, and you should consult with your legal advisors to determine whether your legal entity qualifies for an exemption. For a complete list of exempt entity types, please refer to the [FinCEN FAQs](#).

<sup>1</sup> Under FinCEN's regulations, a "large operating company" employs more than 20 full-time employees in the United States, has an operating presence at a physical office in the United States, and filed a tax return for the previous year demonstrating over \$5 million in gross receipts or sales.

### **Q: What information is required to be reported?**

A: The reporting company is responsible for reporting itself to the registry, including its legal name, any trade name (e.g., “doing business as” or “trading as” names), current street address of its principal place of business, its jurisdiction of formation or registration, and Taxpayer Identification Number issued by the IRS or the relevant foreign jurisdiction. The company must also report beneficial owner information, including any beneficial owner’s name, date of birth and residential street address, plus a unique identifying number from a non-expired identification document (e.g., state issued driver’s license or other identification, a U.S. passport, or, if the individual does not have U.S., state or local identification, a foreign passport), the issuing jurisdiction of the identification document and a copy of the identification document. Similar information must also be provided for the “company applicant(s)” of a reporting company formed on or after January 1, 2024. As the obligation to report falls on the reporting company itself, if you exercise substantial control over a reporting company—for example, because you are a senior officer, manager or director and make important decisions for the company—you should ensure the company reports its beneficial ownership information to FinCEN on a timely basis.

### **Q: Who is a “beneficial owner” or “company applicant” under these new rules?**

A: The regulations define a beneficial owner as any individual who owns or controls 25% or more of the company’s “ownership interests” or directly or indirectly exercises “substantial control” over the reporting company. A company applicant may include up to two individuals: the individual that directly files the document that creates or initially registers the reporting company, and the individual that is primarily responsible for directing or controlling this filing.

### **Q: When are the deadlines for reporting?**

A: Under the current CTA provisions, reporting companies in existence before January 1, 2024, will be required to report their beneficial ownership information by January 1, 2025. Reporting companies created on or after January 1, 2024, will be required to report it within 30 days of receiving actual notice that its creation or registration is effective or public notice of its creation or registration, whichever is earlier. Companies must also notify FinCEN within 30 days of any changes to beneficial ownership information or changes from exempt to non-exempt status.

### **Q: Where do I report, and who will have access to this information?**

A: FinCEN has advised that reporting companies will submit the required information to the registry through a secure filing system on FinCEN’s website. Final regulations on access to the registry have yet to be published, but the CTA does not permit access to the registry by the public. However, it does allow for access by U.S. Department of the Treasury and U.S. federal, state and local law enforcement agencies through specific procedures and under certain conditions. Foreign law enforcement agencies and certain other foreign authorities will be able to submit their requests for information to U.S. federal agencies, which may or may not fulfil the requests. Depending on the final regulations, financial institutions may be granted access to the registry to retrieve legal entity customer information only with customer consent and for limited regulatory purposes. For more information on the conditions of access to reporting information, and safeguards that FinCEN is required to implement to protect the security of this information, please refer to the [FinCEN FAQs](#).

### **Q: How will LLCs, closely held businesses or family offices be impacted?**

A: Any legal entity that meets the definition of reporting company and does not qualify for an exemption will be impacted. It is important to consult with your legal advisers to determine the extent to which these types of legal entities will be impacted by these new requirements. For a complete list of exempt entity types, please refer to the [FinCEN FAQs](#).

### **Q: Are trusts required to report beneficial ownership information to FinCEN? If not, how will they be impacted?**

A: Where a trust holds an ownership interest in an in-scope reporting company, the beneficial ownership information reported by that company will include any individual who has authority over the trust’s assets, such as the trustee, a grantor with the right to revoke, a sole beneficiary of the trust or a beneficiary who has the right to withdraw substantially all assets of the trust. Otherwise, unless a trust is created by a filing with a secretary of state or similar office, it should not have to report its beneficial ownership to the registry. Since typical estate planning trusts are not formed by this kind of filing, they are not likely to be considered reporting companies unless they hold an ownership interest in an in-scope reporting company.

**Q: Does a reporting company that is disregarded for U.S. tax purposes still have to file with the registry?**

A: Yes. If an entity is considered a “reporting company” for purposes of the registry, it will still have to register and report, even if it is disregarded for U.S. tax purposes (e.g., a single-member LLC that is disregarded for U.S. tax purposes). Also, please keep in mind that separate and apart from the CTA, IRS regulations require U.S. disregarded entities (such as single-member LLCs) owned directly or indirectly by a foreign person that engage in reportable transactions with the foreign owners or related parties to file an information return with the U.S. Internal Revenue Service.

**Q: Are there penalties for not complying?**

A: Yes. The CTA provides for civil and criminal penalties for willfully failing to comply, including fines of up to \$10,000 and imprisonment for up to two years.

**Q: What should I do next?**

A: You should consult with your legal advisers as soon as possible to ensure you are prepared to address any potential beneficial ownership reporting requirements in a timely and complete manner.

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