

## WHAT IS THE CTA & WHY DO I CARE?

The Corporate Transparency Act (“CTA”) is a significant piece of legislation enacted in the U.S. to enhance corporate transparency and assist law enforcement in combatting illicit financial activities (e.g., money laundering and fraud). Despite these positive aims, companies and owners must be aware that the CTA will apply to most small- to medium-sized business entities (e.g., LLCs, corporations, registered partnerships, etc.) and, if applicable, will require the company and its ownership to report information to the U.S.’s Financial Crimes Enforcement Network (“FinCEN”) regarding the business, its beneficial owners, and certain other relevant persons.

## WHAT IS A REPORTING COMPANY?

At its core, the CTA’s reach is straightforward (and sweeping): it applies to any business that qualifies as a “reporting company” unless it qualifies for an exemption from reporting. As a preliminary matter, determining whether your business falls within the CTA’s definition of a Reporting Company may require several steps. First, was your business formed either: (1) in the U.S. by filing documents with any State or Tribal authority; or (2) outside the U.S. but registered to do business in any State or Tribal jurisdiction?

If the answer is “yes” to either, your business is likely a Reporting Company—and thus is likely required to report to FinCen—unless it falls within any of the CTA’s express exemptions.

## DOES AN EXEMPTION APPLY?

The CTA contains 23 express exemptions for specific types of entities from its reporting requirements. While the number of exemptions may seem numerous, businesses and owners should beware that most are not broadly applicable unless your business operates in a field already highly regulated by state and/or federal authorities—think insurance companies, credit unions, public utilities, etc. Non-profit entities and accounting firms are also typically exempt from the CTA’s reach. Nevertheless, at least two other exemptions may be broadly applicable: the “large operating company” and “inactive entity” exemptions.

### Large Operating Companies

To qualify as an exempt large operating company, your company must generally satisfy all three of the following requirements:

- Have and maintain 20 full-time employees in the U.S.
- Have a physical office and operating presence within the U.S. (that is distinct from the location of other unaffiliated businesses).
- Have filed a Federal income tax or information return of more than \$5,000,000 in gross receipts or sales (net of returns and allowances).

If your company continuously satisfies all three conditions, it *may* be exempt from the CTA’s reporting requirements (but only for as long as all three conditions continue to be met).

## Inactive Entity

To qualify for the exempt inactive entity, your company must generally satisfy all six of the following requirements:

- It was formed on or before January 1, 2020.
- It is not engaged in active business.
- It is not owned by a “foreign person” under the tax code.<sup>1</sup>
- It has not experienced any change in ownership in the preceding 12-month period.
- It’s not received funds in an amount greater than \$1,000 in the preceding 12-month period.
- It does not otherwise hold any kind or type of assets, including any ownership interest in another business entity.

If your company continuously satisfies all six conditions, it *may* be exempt from the CTA’s reporting requirements (but only for as long as all six conditions continue to be met).

### **WHAT NEEDS TO BE REPORTED?**

Beginning in 2024, each Reporting Company must provide FinCen with specific information about the business itself, its “beneficial owners,” and certain other relevant persons (described in the CTA as “company applicants”).<sup>2</sup> For individual beneficial owners (including certain executive-level employees) and company applicants, these details will include their full legal names, date of birth, current address, and an image of a valid Federal/State/local identification document (*e.g.*, passport or driver’s licenses). Information submitted to FinCEN is not made publicly available and is confidential, and per the CTA, it should only be disclosed to authorized government agencies for law enforcement, national security, and certain regulatory purposes.

After its effective date in January 2024, the CTA will require applicable business entities to make an initial report (“**BOI Report**”) with FinCen promptly after formation. For entities formed after the CTA’s effective date, this initial BOI Report must be submitted by no later than January 1, 2025. After filing an initial BIO Report, no further filings are required as long as the initial BOI Report remains accurate. However, the CTA mandates that businesses and owners will be responsible to provide updates for any change in the reported information by filing an amended BOI Report promptly when reported information changes. Given this ongoing duty, it will be vital that Reporting Companies incorporate policies and procedures to ensure their BOI Report is amended timely with changing circumstances.

### **WHAT’S THE RISK FOR NONCOMPLIANCE?**

The CTA places the responsibility for reporting on the companies themselves, and it is important for these companies to have mechanisms in place for collecting and verifying the required beneficial ownership information. Noncompliance comes with serious possible penalties, civil and criminal. Such penalties can apply to the Reporting Company and the beneficial owners individually.

This review provides an informational overview of the CTA and does not constitute legal advice. If you have questions or concerns about the CTA and your business, you should contact your legal and/or financial advisors for additional information regarding the potential impact the CTA may have on you.

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<sup>1</sup> As defined in Section 7701(a)(30) of the Internal Revenue Code of 1986.

<sup>2</sup> Who constitutes a “beneficial owner” and “company applicant” is beyond the scope of this review, but if you have any concerns or questions, you should contact your financial and/or legal advisors for additional information.