



Corporate Transparency Act:
New Federal Reporting

New York, NY | Newark, NJ | Pittsburgh, PA

Corporate Transparency Act Reporting Requirements – Tick Tock - Is Your Company on the Clock?

Introduction. The federal Corporate Transparency Act (“CTA”) will become effective as of January 1, 2024. The CTA was enacted to assist law enforcement in combatting money laundering, tax fraud, financing of terrorism and other illicit activity through anonymous shell and front companies. As a result of the breadth of CTA provisions, millions of entities will be required to comply with the CTA’s reporting requirements.

The CTA requires domestic and foreign reporting companies (defined below) that do not qualify for an exemption (as discussed in Schedule A annexed hereto) to (i) report certain beneficial ownership information (“BOI”) to the U.S. Department of the Treasury’s Financial Crimes Enforcement Network (“FinCEN”); (ii) disclose information about who created the reporting company or registered it to do business in the U.S.; and (iii) report any change to previously-reported information within specified time periods. Compliance will require a fact-specific inquiry into applicable CTA requirements, company structures, equity ownership and control rights.

All BOI submitted to FinCEN will not be accessible by non-governmental entities.

As further discussed below under “When Reports Must Be Filed,” the critical dates for domestic companies are as follows:

- If a reporting company is created on or after January 1, 2024, it will have 90 days after creation to comply with the CTA reporting requirements.
- If a reporting company is created prior to January 1, 2024, it will have until January 1, 2025 to comply with the CTA reporting requirements.
- If a reporting company is created on or after January 1, 2025, it will have 30 days after creation to comply with the CTA reporting requirements

Which Entities Must Report?

“Reporting companies” include both:

(i) limited liability companies, corporations or other entities¹ created by the filing of a document with (A) a secretary of state or any similar office under the law of a state of the U.S., the District of Columbia or any commonwealth, territory or possession of the U.S. or (B) an Indian tribe (as defined in the Federally Recognized Indian Tribe List Act of 1994) (the “**Subject Jurisdictions**”) and

(ii) non-U.S. entities that are limited liability companies, corporations or other entities formed under the law of a foreign country and registered to do business in any of the Subject Jurisdictions by the filing of a document with a secretary of state or any similar office under the law of any Subject Jurisdiction.

¹ Although FinCEN has not specified other types of entities (in addition to limited liability companies and corporations) that may or may not be reporting companies, it is of the view that (i) subject to the specific exemptions for Exempt Entities, limited liability limited partnerships, business trusts and most limited partnerships are reporting companies since they are generally created by a filing made with a secretary of state or similar office and (ii) sole proprietorships, certain types of trusts and general partnerships that are not created through the filing of a document with a secretary of state or any similar office are not reporting companies even if they register for a business license or similar permit that does not create the entity.

Which Individuals Must be Identified in a Reporting Company's BOI report?

The CTA requires that the BOI report identify the reporting company's:

(i) “**beneficial owners**” and

(ii) in the case of a reporting company that is created or becomes a foreign reporting company on or after January 1, 2024, the individual (“**company applicant**”) who (A) directly files the document that creates a domestic reporting company or first registers a foreign entity to do business in the U.S. or (ii) 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. There may be up to two company applicants.

Because only individuals can be beneficial owners, a reporting company must be able to access information that enables it to trace its entire beneficial ownership chain.

A discussion of the identification of beneficial owners is contained in Schedule B annexed hereto.

Information to be Reported

A reporting company is required to disclose information in its report to FinCEN as to itself, its beneficial owners and in the case of an entity created or registered on or after January 1, 2024, the company applicant(s).

Reporting Company. A reporting company must disclose the following information about itself in its BOI report:

(i) Full legal name of the reporting company;

(ii) Any trade, doing business as (d/b/a) or trading as (t/a) names through which it conducts business, whether or not formally registered;

(iii) its complete current address consisting of (A) in the case of a reporting company with a principal place of business in the U.S., the current street address of its principal place of business or (B) in all other cases, the current street address of the primary location in the U.S. where the reporting company conducts business;²

(iv) its state, tribal, or foreign jurisdiction of formation;

(v) for a foreign reporting company, the state or tribal jurisdiction where it first registered in the U.S.; and

(vi) its IRS taxpayer identification number (TIN), including an employer identification number (EIN).³

² A reporting company may not list a post office box or the address of a corporate formation agent or other third party on its BOI report.

³ If a foreign reporting company has not been issued a TIN, it may provide a tax identification number issued by a foreign jurisdiction and the name of that issuing jurisdiction as an alternative.

Beneficial Owners. A reporting company must disclose the following information⁴ regarding each of its individual beneficial owners and, in the case of a company created or registered on or after January 1, 2024, its company applicant:

- (i) Full legal name;
- (ii) Date of birth;
- (iii) Complete current residential street address;
- (iv) unique identifying number from one of the following nonexpired documents issued to the individual and the issuing jurisdiction: (A) a U.S. passport issued by the U.S. government; (B) a state, local government, or Indian tribal identification document issued for the purpose of identifying the individual; (C) a state-issued driver's license;⁵ and
- (v) an image of the identification document from which the unique identifying number was obtained.

Use of FinCEN Identifier to Satisfy Reporting Requirements.

A “**FinCEN identifier**” is a unique identifying number that FinCEN will issue to beneficial owners who have provided FinCEN with the four pieces of personal information and identification document image discussed above. Once a beneficial owner has obtained a FinCEN identifier, this identifier may be used by a reporting company to satisfy its BOI reporting requirement as it pertains to such beneficial owner.

FinCEN will also issue a FinCEN identifier to reporting companies that have filed initial BOI reports. Once a reporting company has obtained a FinCEN identifier, this identifier may be used by a reporting company to satisfy its informational reporting requirement discussed above.

When Reports Must Be Filed.

Initial Report. A reporting company created or that becomes a foreign reporting company (i) before January 1, 2024 has until January 1, 2025 to file its initial BOI report; (ii) during 2024 must file its initial BOI report within 90 days of the earlier of the date on which (A) it receives actual notice that its creation or, in the case of a foreign reporting company, its registration to do business has become effective or (B) a secretary of state or similar office first provides public notice that the domestic reporting company has been created or, in the case of a foreign reporting company, registered to do business (each a “**Trigger Event**”); and (iii) in 2025 or later must file within 30 days of the occurrence of the earliest applicable Trigger Event.

⁴ If an exempt entity has a direct or indirect ownership interest in a reporting company and an individual is a beneficial owner of the reporting company exclusively by virtue of the individual's ownership interest in such exempt entity, the reporting company may elect to list the name of the exempt entity rather than any information regarding the individual beneficial owner on its BOI report. However, the foregoing treatment does not apply if the beneficial owner holds ownership interests in the reporting company through both exempt entities and non-exempt entities or if the beneficial owner has substantial control over the reporting company.

⁵ If an individual does not have any of the above-listed documents, a passport issued to such individual by a foreign government is to be used.



Updated Reports. Reporting companies are afforded a period of 30 days to update their previously filed BOI reports if any required information regarding the reporting company or its beneficial owners changes.

Inaccurate Reports. If the reporting company becomes aware or has reason to know that any information in its previously filed BOI report was inaccurate when filed, it must file a correct report within 30 days to correct all of the inaccuracies. The CTA provides a safe harbor from liability for filing a false BOI report if the reporting company files a corrected report within 90 days of the submission of an incorrect report. The corrected report must be filed within 30 days of discovery of the inaccuracy and within 90 days of the initial filing in order to take advantage of the safe harbor.

What are the penalties for failing to report under the CTA?

Civil and criminal penalties do not apply to negligent violations, but an individual who willfully fails to report or supplies false information may be subject to civil and criminal penalties, including fines of up to \$10,000 and up to two years in prison. As a result, it will be important for reporting companies to capture valid and accurate information from its beneficial owners and company applicants in order to satisfy their reporting obligations under the CTA. Further, unauthorized disclosure of information contained in a report submitted to FinCEN can result in fines of up to \$250,000 and up to five years in prison.

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The CTA information contained in this memorandum is summary in nature and is qualified in its entirety by the express provisions of the CTA as of the date hereof. This memorandum is not intended to provide specific legal, compliance or other advice to any individual or entity, and receipt of this memorandum does not constitute the establishment of an attorney-client relationship.

Legal counsel should be consulted as each legal entity and its ownership/control structure are unique and the scope of each filing (or ability to rely on exemptions) will be a case by case and often entity-by-entity analysis. In addition, while rules and guidance have been issued by FinCEN since the enactment of the CTA, there remain many unanswered questions on the interpretation of the statutory language. Due to the evolving nature of this area of the law, the continued accuracy of the information contained herein cannot be guaranteed.

This memorandum may be considered advertising in some jurisdictions.

If you have any questions or seek legal advice as to the application of the CTA to your specific situation, please contact one of the attorneys listed below or your regular Herrick, Feinstein LLP attorney.

Daniel A. Etna at +1 212 592 1557 or detna@herrick.com

Fred Green at +1 212 592 5910 or fgreen@herrick.com

Mark Limardo at +1 212 592 1494 or mlimardo@herrick.com

R. Andrew Shore at +1 212 592 1569 or ashore@herrick.com

Ellen Shapiro at +1 212 592 1533 or eshapiro@herrick.com

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Schedule A

Exemptions to the Definition of Reporting Company

The CTA expressly excludes the following types of entities from the definition of reporting company:

1. Securities Reporting Issuer. An issuer (i) of a class of securities registered under Section 12 of the Securities Exchange Act of 1934 (the “**Exchange Act**”) or (ii) required to file supplementary and periodic information under Section 15(d) of the Exchange Act.

2. Governmental Authority. Any entity that (i) is established under the laws of the United States, an Indian tribe, a state, or a political subdivision of a state, or under an interstate compact between two or more states and (ii) exercises governmental authority on behalf of the United States or any such Indian tribe, state or political subdivision.

3. Bank. Any bank, as defined in (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 Advisers Act of 1940 (i.e., certain private trust companies).

4. Credit Union. Any federal credit union or state credit union, as defined in Section 101 of the Federal Credit Union Act.

5. Depository Institution Holding Company. Any (i) bank holding company as defined in Section 2 of the Bank Holding Company Act of 1956 or (ii) savings and loan holding company as defined in Section 10(a) of the Home Owners’ Loan Act.

6. Money Services Business. Any money transmitting or money services business registered with FinCEN.

7. Broker or Dealer in Securities. Any broker or dealer registered under Section 15 of the Exchange Act.

8. Securities Exchange or Clearing Agency. Any exchange or clearing agency, as defined in Section 3 of the Exchange Act, that is registered under Section 6 or 17A of the Exchange Act.

9. Other Exchange Act Registered Entity. Any other entity not described in items 1, 7, or 8 above registered with the Securities and Exchange Commission under the Exchange Act.

10. Investment Company or Investment Adviser. Any entity that is (i) an (A) investment company as defined in Section 3 of the Investment Company Act of 1940 or (B) investment adviser as defined in Section 202 of the Investment Advisers Act of 1940 and (ii) registered with the Securities and Exchange Commission under the Investment Company Act of 1940 or the Investment Advisers Act of 1940.

11. Venture Capital Fund Adviser. Any investment adviser that (i) is described in Section 203(l) of the Investment Advisers Act of 1940 and (ii) has filed Item 10, Schedule A and Schedule B of Part 1A of Form ADV, or any successor thereto, with the Securities and Exchange Commission.

12. Insurance Company. Any insurance company as defined in Section 2 of the Investment Company Act of 1940.

13. State-Licensed Insurance Producer. Any entity that (i) is an insurance producer authorized by a state and subject to supervision by the insurance commissioner or a similar official or agency of a state and (ii) has an operating presence at a physical office within the United States.

14. Commodity Exchange Act Registered Entity. Any entity that is a registered entity as defined in Section 1a of the Commodity Exchange Act or is (i) a futures commission merchant, introducing broker, swap dealer, major swap participant, commodity pool operator or commodity trading advisor, each as defined in Section 1a of the Commodity Exchange Act, or a retail foreign exchange dealer as described in Section 2(c)(2)(B) of the Commodity Exchange Act and (ii) registered with the Commodity Futures Trading Commission under the Commodity Exchange Act.

15. Accounting Firm. Any public accounting firm registered in accordance with Section 102 of the Sarbanes-Oxley Act of 2002.

16. Public Utility. Any entity that is a regulated public utility that provides telecommunications services, electrical power, natural gas, or water and sewer services within the United States.

17. Financial Market Utility. Any financial market utility designated by the Financial Stability Oversight Council under Section 804 of the Payment, Clearing, and Settlement Supervision Act of 2010.

18. Pooled Investment Vehicle. Any pooled investment vehicle operated or advised by a person described in items 3, 4, 7, 10, or 11 above.

19. Tax-Exempt Entity. Any entity that is (i) an organization described in Section 501(c) of the Internal Revenue Code of 1986 (the “**Code**”) (determined without regard to Section 508(a) of the Code) and exempt from tax under Section 501(a) of the Code, except that in the case of any such organization that ceases to be described in Section 501(c) and exempt from tax under Section 501(a), such organization will be considered to continue as a non-reporting organization for the 180-day period beginning on the date of the loss of such tax-exempt status; (ii) a political organization, as defined in Section 527(e)(1) of the Code, that is exempt from tax under Section 527(a) of the Code; or (iii) a trust described in Paragraph (1) or (2) of Section 4947(a) of the Code.

20. Entity Assisting a Tax-Exempt Entity. Any entity that (i) operates exclusively to provide financial assistance to, or hold governance rights over, any entity described in Item 19; (ii) is a United States person; (iii) is beneficially owned or controlled exclusively by one or more United States persons that are United States citizens or lawfully admitted for permanent residence; and (iv) derives at least a majority of its funding or revenue from one or more United States persons that are United States citizens or lawfully admitted for permanent residence.

21. Large Operating Company. Any entity that (i) employs more than 20 full-time employees⁶ in the United States; (ii) has an operating presence at a physical office within the United States; and (iii) filed

⁶ This exemption requires that the entity itself employ more than 20 full-time employees in the United States and does not permit consolidation of this employee head count across multiple entities.



a federal income tax or information return in the United States for the previous year demonstrating more than \$5,000,000 in gross receipts or sales, as reported as gross receipts or sales (net of returns and allowances) on the entity's applicable IRS form, excluding gross receipts or sales from sources outside the United States. For an entity that is part of an affiliated group of corporations that filed a consolidated return, the applicable amount is the amount reported on the consolidated return for such group.

22. Subsidiary of Certain Exempt Entities. Any entity whose ownership interests are controlled or wholly owned, directly or indirectly, by one or more entities described in items 1, 2, 3, 4, 5, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 19, or 21.

23. Inactive Entity. Any entity that (i) was in existence on or before January 1, 2020; (ii) is not engaged in active business; (iii) is not owned by a foreign person, whether directly or indirectly, wholly or partially; (iv) has not experienced any change in ownership in the preceding 12-month period; (v) has not sent or received any funds in an amount greater than \$1,000, either directly or through any financial account in which the entity or any affiliate of the entity had an interest, in the preceding 12-month period; and (vi) does not otherwise hold any kind or type of assets, whether in the United States or abroad, including any ownership interest in any corporation, limited liability company or other similar entity.

End of Schedule

Annex B

Beneficial Owners and Exempt Individuals

Beneficial Owners.

The term “**beneficial owner**” means each individual, other than exempt individuals (as discussed below), who, directly or indirectly, either:

- (i) exercises **substantial control** over the reporting company or
- (ii) owns or controls 25% or more of the **ownership interests** of the reporting company.

Substantial Control. An individual exercises substantial control over a reporting company if the individual:

- (i) serves as the president, chief financial officer, general counsel, chief executive officer, chief operating officer or any other officer of the reporting company, regardless of title, performing a similar function;
- (ii) has authority over the appointment or removal of (A) any senior officer or (B) a majority of the reporting company’s board of directors or similar body;
- (iii) directs, determines, or has substantial influence over important decisions made by the reporting company, such as those regarding (A) the nature and scope of the reporting company’s business; (B) the sale or lease of principal assets; (C) major expenditures or investments; (D) issuance of any equity; (E) incurrence of significant debt; (F) the selection or termination of business lines or ventures, or geographic focus, of the reporting company; (G) approval of the reporting company’s operating budget; (H) compensation schemes and incentive programs for the reporting company’s senior officers; (I) entry into or termination of significant contracts; or (J) amendments of any of the reporting company’s substantial governance documents, including its certificate or articles of incorporation (or similar formation documents), bylaws, or significant policies or procedures; or
- (iv) has any other form of substantial control over the reporting company.⁷

Ownership Interests. The CTA defines a beneficial owner to include an individual who, directly or indirectly, owns or controls not less than 25% of the ownership interests of the reporting company.⁸ The term ownership interests is defined broadly (without regard to the specific type of entity in which the interest is held) to include:

⁷ The CTA contains the following non-exhaustive list of examples where an individual may directly or indirectly, including as a trustee of a trust or similar arrangement, exercise substantial control over a reporting company: (i) board or directors representation; (ii) ownership or control of a majority of the voting power or voting rights of the reporting company; (iii) rights associated with any financing arrangement or interest in the reporting company; (iv) control over one or more intermediary entities that separately or collectively exercise substantial control over the reporting company; (v) arrangements or financial or business relationships regarding the reporting company, formal or informal, with other individuals or entities acting as nominees; or (vi) any other contract, arrangement, understanding, relationship or otherwise.

⁸ An individual may directly or indirectly own or control an ownership interest through any contract, arrangement, understanding, relationship, or otherwise, including joint ownership with one or more other persons, through a nominee, intermediary, custodian, or agent, or through ownership or control of one or more intermediary entities.

(i) any of the following regardless of whether the interest is transferable, classified as stock or anything similar, or confers voting power or voting rights: (A) any equity, stock, or similar instrument; (B) any preorganization certificate or subscription; (C) any transferable share of, or voting trust certificate or certificate of deposit for, an equity security; (D) an interest in a joint venture; or (E) a certificate of interest in a business trust;

(ii) any capital or profits interest in an entity;

(iii) any instrument convertible, with or without consideration, into any share or instrument described above or any future on any such instrument, whether or not characterized as debt;

(iv) any warrant or right to purchase, sell, or subscribe to a share or other interest described above;

(v) any put, call, straddle, or other option or privilege of buying or selling any of the above interests without being bound to do so, except to the extent that the option or privilege is held by a third party and not known to the reporting company; or

(vi) any other instrument, contract, arrangement, understanding, relationship or mechanism used to establish ownership.⁹

If an ownership interest in a reporting company is held through a trust, the following individuals are deemed to have an ownership interest in the reporting company: (i) each trustee of the trust or other individual (if any) with the authority to dispose of trust assets; (ii) each beneficiary who (A) is the sole permissible recipient of the trust's income and principal or (B) has the right to demand a distribution of or withdraw substantially all of the trust's assets; or (iii) each grantor or settlor who has the right to revoke the trust or otherwise withdraw the trust's assets.

Exempt Individuals.

The five categories of individuals listed below are expressly excluded from the definition of beneficial owner:

(i) Minors. If this exemption is utilized for a minor, the reporting company must (A) report the required personal information of a parent or legal guardian of the minor in lieu of the minor's information and indicate on its BOI report that the information relates to such parent or guardian and (B) if the minor still meets the criteria to be its beneficial owner when he or she reaches the age of majority, submit an updated BOI report that includes the former minor's personal information.

(ii) Nominees, intermediaries, custodians and agents. An individual acting as a nominee, intermediary, custodian or agent on behalf of another individual. However, the reporting company must still report required personal information of the individual on behalf of whom the nominee, intermediary, custodian or agent is acting.

(iii) Certain employees. Employees of a reporting company (A) who are not senior officers (as discussed above) acting solely as an employee subject to the will and control of the employer in what and how to

⁹ Debt instruments are considered ownership interests if they enable the holder to exercise the same rights as one of the equity or other interests described above, including if they enable the holder to convert the debt instrument into one of the specified equity or other interests.

perform work, and that the employer may discharge from work and (B) whose substantial control over or economic benefits from the reporting company are derived solely from his or her employment status as an employee.

(iv) Heirs. An individual whose only interest in a reporting company is a future interest through a right of inheritance. However, once the individual inherits the interest, this exemption no longer applies.

(v) Certain creditors of a reporting company. Creditors who only have a right to be paid a predetermined sum of money who meet the definition of beneficial owner solely through a loan covenant or other similar right associated with their right to repayment that is intended to secure the right to receive payment or enhance the likelihood of repayment of the debt.

End of Annex