PRESENTED AT

32nd Annual LLCs, LPs and Partnerships
July 13-14, 2023
Austin, TX

The Corporate Transparency Act: Where We Are & What's Next

Lauren A. White

Author Contact Information:
Lauren A. White
Haynes and Boone, LLP
Dallas, Texas

lauren.white@haynesboone.com
214.651.5385

The Corporate Transparency Act: Where We Are & What's Next

Lauren A. White and Annie Lawson, Haynes and Boone, LLP

The Corporate Transparency Act (the "***CTA***" or the "***Act***"), 31 U.S.C. § 5336, is groundbreaking, bipartisan legislation introduced to address the growing concerns surrounding anonymous shell companies and money laundering activities.[1] The CTA was passed in January 2021, but its reporting requirements will not become effective until January 1, 2024. The U.S. Treasury's Financial Crimes Enforcement Network ("***FinCEN***") finalized regulatory rules (the "***Final Regulations***") implementing the beneficial ownership information reporting requirements under the Act in September 2022. These Final Regulations similarly go into effect on January 1, 2024.

The CTA establishes reporting obligations that will require a range of entities to file identifying information about themselves, their beneficial owners (including senior officers and other decisionmakers), as well as people involved in creating or registering the entities with FinCEN. FinCEN estimated that over 32 million existing companies will be subject to these reporting obligations, with an additional 5 million of newly formed entities subject each year.[2]

I. Reporting Requirements

Under the Final Regulations, all non-exempt entities will be required to report ultimate beneficial ownership (and any subsequent changes to the information reported). Foreign entities registered to do business in the United States are also reporting companies under the Final Regulations.

a. Who Must Report — Reporting Companies

The CTA reporting requirements apply to "***Reporting Companies***" as defined by the statute.[3] A Reporting Company means a corporation, limited liability company, or other similar entity that is (i) created by the filing of a document with a secretary of state or similar office under the law of a state or Indian tribe or (ii) formed under the law of a foreign country and is registered to do business in the United States by the filing of a document with a secretary of state or similar office under the laws of a state or Indian tribe.[4]

Generally, all corporations, limited liability companies, and limited partnerships that are doing business in the United States are subject to the CTA reporting obligations as Reporting Companies, unless otherwise exempt. Business trusts involving a state law filing, such as Delaware statutory trusts, will also be subject to the CTA.

However, there are twenty-three categories of exempt entities that will not have to make a filing, including:

---

[1] Beneficial Ownership Information Reporting Requirements, 87 FR 59498 (Sept. 30, 2022) (to be codified at 31 CFR 1010).
[2] Beneficial Ownership Information Reporting Requirements, 87 FR at 59584.
[3] 31 U.S.C. 5336(a)(11).
[4] *Id.*

- Publicly traded companies: Companies that are already subject to reporting requirements under the Securities Exchange Act of 1934 are generally exempt from the CTA. This exemption includes companies whose securities are registered under Section 12 of the Securities Exchange Act or that are required to file reports under Section 15(d) of the same act.[5]

- Governmental entities.[6]

- Financial institutions: Entities that are already subject to comprehensive regulation and supervision by federal functional regulators or state bank regulators are exempt. This includes entities such as banks, credit unions, broker-dealers, registered investment companies, insurance companies, and certain types of financial services providers.[7]

- Public accounting firms registered under Section 102 of the Sarbanes-Oxley Act.[8]

- Public utility companies.[9]

- Financial market utilities.[10]

- Certain pooled investment vehicles.[11]

- 501(c) non-profits and political organizations as well as certain supporting organizations.[12]

- Certain large operating companies: The CTA exempts each entity that (i) employs more than 20 full-time employees in the United States, (ii) filed a federal income tax return for the previous year demonstrating more than $5,000,000 in gross receipts or sales (including through entities it owns and other entities through which it operates), and (iii) has a U.S. operating presence at a U.S. physical office (which the entity owns or leases and that is physically distinct from the place of business of unaffiliated businesses).[13]

- Certain inactive entities.[14]

Most subsidiaries that are owned or controlled by exempt entities (other than certain money transmitting businesses, pooled investment vehicles, and non-profit support entities) will also be exempt.[15]

---

[5] 31 U.S.C. § 5336(a)(11)(B)(i).
[6] 31 U.S.C. § 5336(a)(11)(B)(ii)
[7] 31 U.S.C. § 5336(a)(11)(B)(ii),(iii),(iv), (v), (vi), (vii), (viii), (ix), (x), (xi), (xii), (xiii)
[8] 31 U.S.C. § 5336(a)(11)(B)(xv)
[9] 31 U.S.C. § 5336(a)(11)(B)(xvi)
[10] 31 U.S.C. § 5336(a)(11)(B)(xvii)
[11] 31 U.S.C. § 5336(a)(11)(B)(xviii)
[12] 31 U.S.C. § 5336(a)(11)(B)(xix), (xx).
[13] 31 U.S.C. § 5336(a)(11)(B)(xxi), (f)(6)
[14] 31 U.S.C. § 5336(a)(11)(B)(xxiii)
[15] 31 U.S.C. § 5336(a)(11)(B)(xxii)

Title search: The Corporate Transparency Act: Where We Are & What's Next