

IDENTIFYING BENEFICIAL OWNERS UNDER THE CORPORATE TRANSPARENCY ACT

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I. OVERVIEW

Congress enacted the Corporate Transparency Act (“CTA”) under the Fiscal Year 2021 National Defense Authorization Act on January 1, 2021.¹

The requirements of the CTA are being implemented “to help prevent and combat money laundering, terrorist financing, corruption, tax fraud, and other illicit activity, while minimizing the burden on reporting entities.”² That said, even FinCEN acknowledges the enormous reporting burden imposed by the CTA, which it most recently estimated to be over 118 million hours in 2024, with an annual burden of over 18 million hours thereafter.³

The CTA added 31 USC §5336 to the Bank Secrecy Act with the title, “Beneficial ownership information reporting requirements”. The CTA has three core elements:

1. Reports to FinCEN—The CTA requires certain entities (each a “reporting company”) to identify itself, its primary owners and officers (each a “beneficial owner”), and certain professionals who helped to form or register the reporting company (each a “company applicant”). The reporting company must then report to the Financial Crimes Enforcement Network (“FinCEN”) information sufficient to identify the reporting company, its beneficial owners, and any company applicants (“beneficial owner information” or “BOI”).
2. Control Access to Information—FinCEN will provide BOI to government regulatory and investigatory bodies, but it will not be made available to the general public. In addition, there are specific procedural requirements for government actors to access this information, along with civil and criminal penalties for improperly accessing or using such information.
3. Revised Due Diligence Requirements—The Secretary of the Treasury is required to revise Customer Due Diligence requirements for financial institutions to conform to the CTA, and account for the ability of financial institutions to access beneficial ownership information.

These materials explain the key terms and concepts of the CTA.

II. REPORTING COMPANY

A reporting company can be a domestic reporting company or a foreign reporting company.⁴ A reporting company, and only a reporting company, is required to file reports under the CTA⁵ disclosing BOI with regard to beneficial owners and company applicants.⁶

A. Domestic Reporting Company

A domestic reporting company is defined as (1) a corporation, (2) a limited liability company, or (3) any other entity that is created by the filing of a document with a secretary of state or a similar office under the law of a state or Indian Tribe.⁷

The preamble to the proposed regulations clarifies that that limited partnerships, limited liability partnerships, and business trusts (a/k/a statutory trusts) are expected to fall into the category of “other similar entity” because each requires a state filing to exist.⁸

A general partnership is generally not formed through a filing, and therefore is not a domestic reporting company. This appears to be true even if that general partnership subsequently registers to do business in a state, since registering to do business does not result in the creation of the entity. Similarly trusts are no reporting companies and therefore do not have to file under the CTA.

III. FOREIGN REPORTING COMPANY

A foreign reporting company is any entity that is a corporation, limited liability company, or other entity that is formed under the law of a foreign country and that is registered to do business in the United States by the filing of a document with a secretary of state or equivalent office under the law of a state or Indian Tribe.⁹

IV. EXEMPTIONS FOR COMPANIES

The CTA specifically excludes from the definition of “reporting company” twenty-three types of entities.¹⁰ The statute also authorizes the Secretary of the Treasury, with the written concurrence of the Attorney General and the Secretary of Homeland Security, to exempt, by regulation, additional entities for which collecting BOI would neither serve the public interest nor be highly useful in national security, intelligence, law enforcement, or other

¹ See Sections 6401-6403 of H.R. 6395.

² 88 Fed. Reg. 2761 (January 17, 2023).

³ *Id.* at 2762.

⁴ 31 CFR §1010.380(c)(1). See also 31 U.S.C. §5336(a)(11).

⁵ 31 CFR §1010.380(a)(1).

⁶ 31 CFR §1010.380(b).

⁷ 31 CFR §1010.380(c)(1)(i).

⁸ 86 Fed. Reg. 69938 (December 8, 2021).

⁹ 31 CFR §1010.380(c)(1)(ii).

¹⁰ 31 U.S.C. §5336(a)(11)(B). See also 31 CFR §1010.380(c)(2).

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