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IRS CIRCULAR 230 DISCLAIMER

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You should always seek advice from independent tax advisors regarding the same.

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THE CORPORATE TRANSPARENCY ACT (CTA)

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Introduction

Corporate Transparency Act (CTA)

- ▣ Effective January 1, 2024, the CTA is intended to aid law enforcement in combatting illicit activity conducted through anonymous shell companies.
- ▣ Requires certain privately held entities to report beneficial ownership information (BOI) to the US Treasury Department's Financial Crimes Enforcement Network (FinCEN)

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Introduction

Corporate Transparency Act (CTA)

- ▣ The Reporting Requirements are intended to apply broadly and impact small companies, many of whom have never made federal filings other than those with the Internal Revenue Service.
- ▣ Many larger or otherwise highly regulated entities are exempt from the CTA.

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Overview

What We Will Cover (Perhaps Not in this Order!)

- Entities that are reporting companies under the CTA and must submit a BOI report to FinCEN
- Exemptions from the CTA's reporting requirements
- The information that a reporting company must report to FinCEN
- When initial reports and changes to reports must be filed
- The penalties for failing to comply with the reporting requirements
- Who is expected to report under the CTA
- Steps to take to comply with the CTA
- Current constitutionality of the CTA

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ENTITIES THAT ARE REPORTING COMPANIES UNDER THE CTA AND MUST SUBMIT A BOI REPORT TO FINCEN

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Reporting Companies Under the CTA

- ▣ Both domestic and foreign entities can be reporting companies under the CTA
- ▣ Domestic reporting companies are corporations, limited liability companies (LLCs), or other entities created by filing a document with a secretary of state (SOS) or any similar office under the law of either:
 - A state of the US, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, American Samoa, Guam, the US Virgin Islands, or any other commonwealth, territory, or possession of the US.
 - An Indian tribe

31 C.F.R. § 1010.380(c)(1)(i)

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Reporting Companies Under the CTA

▣ **Foreign reporting companies** are non-US entities that are:

- Corporations, LLCs, or other entities.
- Formed under the law of a foreign country.
- Registered to do business in any state or tribal jurisdiction by the filing of a document with a SOS or any similar office under the law of a state or Indian tribe.

31 C.F.R. § 1010.380(c)(1)(ii)

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EXEMPTIONS FROM THE CTA'S REPORTING

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Exemptions from the CTA's Reporting

The CTA excludes from the reporting company definition **23 categories** of entities. Some of these entities are exempt because they are already highly regulated. Others are exempt for different reasons which will soon be clear.

31 C.F.R. § 1010.380(c)(2)

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Exempt Entities

Banks, bank holding companies, and savings and loan holding companies	Any bank, as defined in (A) Section 3 of the Federal Deposit Insurance Act, (B) Section 2(a) of the Investment Company Act of 1940, or (C) Section 203(a) of the Investment Advisers Act of 1940.
Credit unions	Any Federal credit union or state credit union, as those terms are defined in Section 101 of the Federal Credit Union Act (12 U.S.C. 1752).
Money transmitting businesses and money services businesses and their subsidiaries	Any money transmitting business registered with FinCEN under 31 U.S.C. 5330, and any money services business registered with FinCEN under 31 CFR 102.280.
Securities Reporting Issuers	An issuer of securities that is (a) an issuer of a class of securities registered under Section 12 of the Securities Exchange Act of 1934 (15 U.S.C. 78b), or (b) is required to file supplementary or periodic information under Section 15(d) of the Securities Exchange Act of 1934.
Securities brokers or dealers	Any broker or dealer (as defined in Section 3 of the Securities Exchange Act of 1934 (15 U.S.C. 78c) that is registered under Section 15 of the 1934 Act (15 U.S.C. 78e).
Securities exchange or clearing agencies	Any exchange or clearing agency (as defined in Section 3 of the Securities Exchange Act of 1934) that is registered under Sections 6 or 17A of the 1934 Act.
Other Securities Exchange Act of 1934 Entities	Any other entity not described in the securities reporting issuer, broker/dealer in securities, or securities exchange or clearing agency exemptions that is registered with the SEC under the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.).
Regulated public utilities	Any entity that is a regulated public utility as defined in 26 U.S.C. 7701(a)(33)(A) that provides telecommunications services, electrical power, natural gas, or water and sewer services within the United States.
Financial market utilities	Entities designated by the Financial Stability Oversight Council ("FSOC") under Section 804 of the Payment, Clearing, and Settlement Supervision Act of 2010 (12 U.S.C. 5463).

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Exempt Entities Continued

Tax-exempt entities and entities assisting tax-exempt entities and their subsidiaries	Any 501(c) organization exempt from tax under 501(a), political organizations defined in IRC 527(a)(1) exempt from tax under 527(a), or Charitable trust or Charitable-Split Interest Trust described in IRC 647(a)(1) or (2). Assisting entities (i) operate to provide financial assistance/governance rights over an Exemption 19 entity, (2) are a U.S. person under IRC 7701(a)(30), (3) are beneficially owned or controlled exclusively by U.S. individual persons, and (4) derive at least most of its funding/revenue from one or more U.S. individual persons.
Governmental entities	Legal entities that are established under U.S. law (federal, state, Indian tribe, political subdivision of a state, or interstate compact between two or more states) and exercises governmental authority on behalf of the United States, an Indian tribe, a state, or political subdivision.
Inactive entities and their subsidiaries	Entities that (i) precede January 1, 2020, (ii) do not have an active business, (iii) have no foreign ownership, (iv) no recent change of ownership (last 12 months), (v) has not sent or received any funds greater than \$1,000 through any financial account (including affiliates) in last 12 months, and (vi) does not hold any assets (including ownership interest in entities).
Large operating company	Entities with an operating presence physically inside the U.S., not sharing space with other entities or least 20 full-time U.S. employees, at least \$5 million in gross receipts or sales on its consolidated tax return from sources inside the U.S.
Insurance companies and producers	Any insurance company as defined in section 2 of the Investment Company Act of 1940 (15 U.S.C. 80a-2). Also, any entity that (a) 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 (b) has an operating presence at a physical office within the United States.
Public accounting firms	Any public accounting firm registered in accordance with section 102 of the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7212).
Venture capital fund advisers	Any investment adviser that (a) is described in Section 203(i) of the Investment Advisers Act of 1940 (15 U.S.C. 80b-3(i)), and (b) has filed with 10, Schedule A, and Schedule B of Part 1A of Form ADV, or any successor forms, with the Securities and Exchange Commission.
Certain pooled investment vehicles	Any pooled investment vehicle operated or advised by a person described in certain exemptions. For CTA purposes, a pooled investment vehicle is an entity that is either (1) an investment company (as defined in Section 3(a) of the 1940 Act), or (2) would be an investment company but for the exclusions provided by paragraphs (1) or (7) of 3(a) of the 1940 Act and is identified (or will be identified) by its legal name by the applicable investment adviser in its Form ADV (or successor form) filed with the SEC.

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The Subsidiary Exemption

- Applies to entities whose ownership interests are controlled or wholly owned, directly or indirectly, by one or more qualifying exempt entities.
- Control – Control for purposes of the Subsidiary Exemption is not defined in the CTA. Based on the preamble, FinCEN believes that the word control in this context is the equivalent of “wholly controlled”
- Control Over “Ownership Interests” – The Subsidiary Exemption looks for control over the ownership interest of the company and not control over the activities or decisions of the company

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The Subsidiary Exemption

- ▣ Does the Subsidiary Exemption apply to a company that is 100% owned by a bank or trust company in its capacity as trustee of a family trust (a “fiduciary subsidiary”)?
 - It is unclear whether the subsidiary exemption can apply to a fiduciary subsidiary.
 - Some relevant questions:
 - Is it a revocable trust?
 - Is it a directed trust?
 - Does the grantor have a substitution power?

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The Subsidiary Exemption

- ▣ Does the Subsidiary Exemption apply to a company that is 100% owned by a pooled investment company?
 - No, because the Subsidiary Exemption is not available to the subsidiaries of a pooled investment company.
 - FinCEN explicitly refused to extend the Subsidiary Exemption to pooled investment companies.
 - It may be possible to extend the exemption of another exempt entity in the structure with 100% control over the disposition of the pooled investments company’s assets.

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INFORMATION A REPORTING COMPANY MUST REPORT TO FINCEN

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Information a Reporting Company Must Report to FinCEN

A reporting company must disclose information about itself and:

- Its **individual beneficial owners** and, for entities created or registered on or after the Effective Date, its **company applicants**. A company applicant is an **individual** who either:
 - Directly files the document that creates a domestic reporting company or first registers a foreign reporting company to do business in the US.
 - 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.

31 C.F.R. § 1010.380(e)

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Information a Reporting Company Must Report to FinCEN

As to **each individual beneficial owner and company applicant**, a reporting company **must disclose**:

- ☐ Their full legal name.
- ☐ Their date of birth.
- ☐ Their complete current address.
- ☐ A unique identifying number.
- ☐ An image of the document with the unique identifying number.

31 C.F.R. § 1010.380(b)(1)(ii)

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Information a Reporting Company Must Report to FinCEN

The **unique identifying number** must come from one of the following **nonexpired documents** issued to the individual:

- ☐ A US passport issued by the US government.
- ☐ A state, local government, or Indian tribal identification document issued to identify the individual.
- ☐ A state-issued driver's license.
- ☐ If an individual does not have one of the above, a passport issued to them by a foreign government.

31 C.F.R. § 1010.380(b)(1)(ii)(D)

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Information a Reporting Company Must Report to FinCEN

- ❑ Instead of the specific information about each beneficial owner, a reporting company can report an individual's FinCEN identifier (**FinCEN ID**).
- ❑ As of the Effective Date, an individual may obtain a FinCEN ID by giving to FinCEN the same information a reporting company must provide regarding its beneficial owners.
- ❑ A reporting company may also obtain a FinCEN ID by checking a box on its BOI report when it submits the report.

31 C.F.R. § 1010.380(b)(4)(i)

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Information a Reporting Company Must Report to FinCEN

A reporting company **must report** the following **about itself**:

- ❑ Full legal name, any trade names, and any doing business as (d/b/a) or trading as (t/a) names under which it conducts business, whether or not formally registered.
- ❑ Complete current address of the company's principal place of business.
- ❑ Its state, tribal, or foreign jurisdiction of formation and, for a foreign reporting company, the state or tribal jurisdiction where it first registered in the US.
- ❑ Its IRS taxpayer identification number, including an employer identification number.

31 C.F.R. § 1010.380(b)(1)(i)

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WHEN A REPORTING COMPANY MUST FILE ITS INITIAL REPORT

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When a Reporting Company Must File Its Initial Report

A reporting company that is created or becomes a foreign reporting company

- ▣ **Before the Effective Date** has until **January 1, 2025**, to file its initial BOI report.
- ▣ **On or after the Effective Date** must file its initial BOI report within **90 days**, if created or registered **in 2024**, and within **30 days** if created or registered **on or after January 1, 2025**, of the earlier of the date on which:
 - It receives actual notice that its creation or registration is effective.
 - A SOS or similar office first provides public notice that the company has been created or registered to do business.

31 C.F.R. § 1010.380(a)(1)

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When a Reporting Company Must File Changes to Reports

A reporting company has **30 days** to:

- ▣ **Report any changes** to information in its BOI report regarding itself or its beneficial owners. For example:
 - The reporting company changes its name or address or becomes exempt.
 - A beneficial owner transfers their interest or there is a change to their address or unique identifying number.
- ▣ **Correct any inaccuracies** in its BOI report if it becomes aware or has reason to know of the inaccuracy.

31 C.F.R. § 1010.380(a)(2) and (3)

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PENALTIES

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Penalties

- There are both **civil** and **criminal** penalties for violating the CTA, including a **fine up to \$10,000, imprisonment for up to two years, or both**, for any person **willfully**:
 - Providing or attempting to provide false or fraudulent BOI.
 - Failing to report complete or updated BOI to FinCEN.
- Penalties may also apply to reporting companies and individuals who:
 - Cause a reporting company not to report.
 - Are **senior officers** of a reporting company at the time of its failure to fulfill its obligation to accurately report or update BOI.
 - Disclose or use the BOI reported to FinCEN in an unauthorized manner.

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Safe Harbor from Penalties

A **safe harbor** exists if a reporting company with reason to believe its BOI report contains inaccurate information files a corrected report **within 30 days** of becoming aware or having reason to know of the inaccuracy, provided that the inaccuracy:

- Is corrected **within 90 days** of filing the inaccurate BOI report.
- Was not made to evade reporting requirements.
- Was not known to the person filing the report at the time it was submitted.

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WHO REPORTS UNDER THE CTA

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Beneficial Owners

- ☐ For each individual who is a beneficial owner, a reporting company will have to provide:
 - the individual's name;
 - date of birth;
 - address; and
 - an identifying number from an acceptable identification document such as a passport or US driver's license, and the name of the issuing state or jurisdiction of identification document

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Beneficial Owners

A **beneficial owner** is any **individual** who, directly or indirectly, **either**:

- ☐ Exercises **substantial control** over the reporting company.
- ☐ **Owns or controls 25% or more** of the **ownership interests** of the reporting company.

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Beneficial Owners

- ☐ Neither Substantial Control nor Ownership or Control is defined in the CTA
- ☐ They are defined under the Regulation.
- ☐ **Owns or controls 25% or more** of the **ownership interests** of the reporting company.

31 C.F.R. § 1010.380(d)

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Substantial Control

An individual **exercises substantial control** over a reporting company if the individual does any of the following:

- ☐ Serves as a **senior officer** of the reporting company.
- ☐ Has **authority to appoint or remove** either:
 - Any senior officer.
 - A majority of the reporting company's board of directors or similar body.
 - Directs, determines, or has **substantial influence over important decisions** made by the reporting company.
- ☐ Has **any other form of substantial control** over the reporting company.

Note: **Does not** include powers held as employee (not Senior Officer) mere creditor, professional advisors acting solely in that capacity.

31 C.F.R. § 1010.380(d)(1)(i)

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Senior Officers

Senior officers are:

- ☐ The president.
- ☐ The chief financial officer.
- ☐ The general counsel.
- ☐ The chief executive officer.
- ☐ The chief operating officer.
- ☐ Any other officer, **regardless of title, performing a similar function.**

31 C.F.R. § 1010.380(f)(8)

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Substantial Influence Over Important Decisions

Important decisions a reporting company makes include:

- ☐ Those concerning the nature and scope of the reporting company's business.
- ☐ Selling or leasing principal assets.
- ☐ Making major expenditures or investments.
- ☐ Issuing any equity.
- ☐ Incurring significant debt.
- ☐ Selecting or terminating business lines or ventures, or geographic focus, of the reporting company.

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Substantial Influence Over Important Decisions

Important decisions a reporting company makes also include:

- ☐ Approving its operating budget.
- ☐ Compensation schemes and incentive programs for senior officers.
- ☐ Entering into or terminating significant contracts.
- ☐ Amending any of the reporting company's substantial governance documents or significant policies or procedures.

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Examples of Substantial Control

Exercising substantial control may include:

- ☐ Board representation (but being a director by itself is **not** determinative).
- ☐ Owning or controlling a majority of the voting power or voting rights of the reporting company.
- ☐ Rights associated with any financing arrangement or interest in the reporting company.

31 C.F.R. § 1010.380(d)(1)(ii)

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Examples of Substantial Control

Exercising substantial control may also include:

- ☐ Control over one or more intermediary entities that separately or collectively exercise substantial control over the reporting company.
- ☐ Arrangements or financial or business relationships, formal or informal, with other individuals or entities acting as nominees.
- ☐ **Any other contract, arrangement, understanding, relationship, or otherwise.**

31 C.F.R. § 1010.380(d)(1)(ii)

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Ownership Interests

The Final Reporting Rule defines ownership interests **broadly** to include the following regardless of whether the interest is transferable, classified as stock or similar, or confers voting power or rights:

- ▣ Any equity, stock, or similar instrument.
- ▣ Any preorganization certificate or subscription.
- ▣ Any transferable share of, or voting trust certificate or certificate of deposit for, an equity security.
- ▣ An interest in a joint venture.
- ▣ A certificate of interest in a business trust.

31 C.F.R. § 1010.380(d)(2)(i)(A)

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Ownership Interests

Ownership interests also include:

- ▣ Any **capital** or **profits interest** in an entity.
- ▣ 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.
- ▣ Any **warrant** or **right to purchase, sell, or subscribe** to a share or other interest described above.
- ▣ 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.
- ▣ Any **other instrument, contract, arrangement, understanding, relationship, or mechanism used to establish ownership.**

31 C.F.R. § 1010.380(d)(2)(i)

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Ownership Interests

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.
- ▣ A nominee, intermediary, custodian, or agent.
- ▣ Ownership or control of one or more intermediary entities.

31 C.F.R. § 1010.380(d)(2)(ii)

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Ownership Interests

If an ownership interest in a reporting company is held **through a trust**, these **individuals** are deemed to have an **ownership interest** in the reporting company:

- A **trustee** of the trust or any other individual having authority to dispose of trust assets.
- ▣ A **beneficiary** who either:
 - Is the sole permissible recipient of the trust's income and principal.
 - Has the right to demand a distribution of or withdraw substantially all of the trust's assets.
- ▣ A **grantor or settlor** having the right to revoke the trust or otherwise withdraw trust assets.

31 C.F.R. § 1010.380(d)(2)(ii)(C)

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Calculating Total Ownership Interests

There are **standards to calculate if an individual meets the 25% ownership or control threshold** for a reporting company:

- An individual's total ownership interests that they own or control, directly or indirectly, are to be calculated:
 - As a percentage of the total outstanding ownership interests of the reporting company.
 - At the present time, with any options or similar interests being treated as exercised.
- If capital or profits interests are issued (including in entities taxed as partnerships), the individual's ownership interests are their capital and profits interests as a percentage of the total outstanding capital and profits interests.

31 C.F.R. § 1010.380(d)(2)(iii)

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Calculating Total Ownership Interests

- ▣ For **corporations, entities treated as corporations for tax purposes, and other reporting companies that issue shares of stock**, the applicable percentage is the **greater of the total combined**:
 - Voting power of all classes of ownership interests of the individual as a percentage of the total outstanding voting power of all classes of ownership interests entitled to vote.
 - Value of the individual's ownership interests as a percentage of the total outstanding value of all classes of ownership interests.
- ▣ If the calculations **cannot** be made with **reasonable certainty**, an individual owning or controlling 25% or more of any class or type of ownership interest of a reporting company is **deemed to have exceeded the 25% ownership or control threshold**.

31 C.F.R. § 1010.380(d)(2)(iii)

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Individuals Exempt as Beneficial Owners

Five categories of individuals are exempt from the beneficial owner definition:

- ❑ Minor children.
- ❑ Individuals acting as a nominee, intermediary, custodian, or agent on another's behalf.
- ❑ Certain employees who are not senior officers.
- ❑ Heirs.
- ❑ Certain creditors of a reporting company.

31 C.F.R. § 1010.380(d)(5)

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Company Applicants

- ❑ Company Applicants are required to be reported as of January 1, 2024.
- ❑ Up to two individuals could qualify as company applicants: but are capped at two.
 - The individual who directly files the document that creates or registers the company; and
 - If more than one person is involved in the filing, the individual who is primarily responsible for directing or controlling the filing.
- ❑ None of the Company Applicants need to be reported for companies formed prior to January 1, 2024.

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Company Applicants

- ❑ For each individual who is a company applicant, a reporting company will have to provide:
 - the individual's name;
 - date of birth;
 - address; and
 - an identifying number from an acceptable identification document such as a passport or US driver's license, and the name of the issuing state or jurisdiction of identification document
- ❑ If the company applicant works in corporate formation, then the reporting company must report the company applicant's business address. Otherwise, the reporting company must report the company applicant's residential address.

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Company Applicants

- ▣ Accountant and Lawyers may both be company applicants, depending on their role in filing the document that creates or registers a reporting company. In many cases, company applicants may work for a business formation service or law firm.
- ▣ If an accountant or lawyer filed the document that created or registered the reporting company, then they are a company applicant. IF more than one person was involved in the filing, an accountant or lawyer may be a company applicant if they are primarily responsible for directing or controlling the filing.

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COMPLYING WITH THE CTA

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Complying with the CTA

To comply with the CTA, a reporting company must be able to:

- ▣ **Determine** the individuals who are its **beneficial owners**.
- ▣ **Timely obtain** the **required personal information** of its beneficial owners so the company can meet the CTA reporting deadlines.
- ▣ Be **promptly notified** of any **change** in its beneficial owners' required personal information so the company can timely report the change to FinCEN.

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Determining Beneficial Owners

- ▣ An individual may **indirectly** own or control an ownership interest in a reporting company through ownership or control of one or more intermediary entities.
- ▣ A reporting company with **one or more entities** as owners or in management (like a limited partnership with an LLC acting as its general partner) may need those entities to provide the required personal information of all the individuals who are their direct and indirect owners.

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Obtaining Beneficial Ownership Information and Being Notified of Changes

- ▣ To meet the CTA's filing deadlines, a reporting company needs to be able to **promptly**:
 - Obtain its beneficial owners' required personal information.
 - Receive notification of any changes to that personal information.
- ▣ A reporting company must decide how and when it will acquire this information from the appropriate individuals and implement appropriate policies and procedures if necessary.

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Obtaining Beneficial Ownership Information and Being Notified of Changes (cont'd)

- ▣ Owners, management, and other persons that may need to give a reporting company personal information should be required to provide the information and updates to the information with enough time for the company to timely review and report the information.
- ▣ These **obligations** may be contained in **agreements** such as:
 - The reporting company's governing documents (an LLC or LP agreement or a stockholders' agreement, for example).
 - A company policy.
 - An investment, warrant, employment, equity incentive, or other agreement.

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Remedies for Failure to Provide Beneficial Ownership Information

- ▣ If obligations are set out in an agreement, entity owners can also be required to provide their governing documents and the personal information of those individuals who may be beneficial owners of the company
- ▣ To enforce these obligations, parties should consider including in any agreement remedies for failing to provide the required information. Depending on a reporting company's entity type and ownership structure, company-specific factors, and the applicable law in the reporting company's state of formation, remedies to consider may include:
 - Requiring the defaulting party to **indemnify** the reporting company and other specified parties
 - **Specific performance**
 - A **call right** to repurchase the defaulting owner's ownership interests (presumably at a discount), or, if the reporting company is an LLC or LP, **forfeiture** of LLC or partnership interests or any bonus or incentive equity
 - The **involuntary disassociation or expulsion** of a member or partner

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CONSITUTIONALITY

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CTA Constitutionality Case Update

National Small Business Association ("NSBA") Case

- ▣ On March 1, 2024, the U.S. District Court for the Northern District of Alabama ruled that the CTA is unconstitutional because it exceeds the Constitution's limits on Congress' power and lacks a sufficient nexus to any enumerated power to be a necessary or proper means of achieving Congress' policy goals.
- ▣ Final judgment declaring the act unconstitutional only enjoins the government from enforcing it against the plaintiffs.
- ▣ In response, on March 4, 2024, FinCEN issued a release announcing that it will comply with the court's order for as long as it remains in effect, but (again) only with respect to the plaintiffs in that action which only includes members of the NSBA as of March 1, 2024. It is FinCEN's position that anyone joining the NSBA after March 1, 2024 will not be exempt from CTA reporting.
- ▣ The case already has been appealed, but enforcement is not stayed while the government appeals. Everyone else still must comply with the CTA.

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Other Cases and Challenges

- ▣ **Robert J. Gargasz Co. v. Yellen**, No. 1:23-cv-02468 (N.D. Ohio Dec. 29, 2023)
 - Similar lawsuit and claims as the *NSBA* case but seeks nationwide injunctive relief against enforcement of the CTA.
- ▣ **William Boyle v. Janet Yellen et al.**, No. 2:24-CV-00081 (D.C. Maine Mar. 15, 2024)
 - challenges the constitutionality of the Corporate Transparency Act (CTA), asserting that the law infringes on states' regulatory authority and violates the 9th and 10th amendments.
- ▣ **Small Business Ass'n of Michigan, et al. v. Janet Yellen et al.**, No. 1:24-cv-00314 (Michigan Mar. 26, 2024)
 - Challenges the constitutionality of the CTA using similar arguments as in the *NSBA* case and citing the holding in *NSBA*.
 - Also argues that the CTA violates Fourth Amendment rights of beneficial owners whose personal identification information will go into the BOSS database and then shared among law enforcement agencies.
- ▣ **Black Economic Council of Massachusetts, Inc. v. Yellen**, No. 1:24-cv-11411 (D. Mass. May 29, 2024)
 - Challenges based on Fourth Amendment rights of beneficial owners and company applicants, outside of Congress' enumerated powers, and First Amendment right to associate, and asserts Fifth and Ninth Amendment claims.
 - Seeks nationwide injunctive relief against enforcement of the CTA.

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FREQUENTLY ASKED QUESTIONS

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Sample FAQs

- ▣ Under the Corporate Transparency Act, who can access beneficial ownership information?
 - FinCEN will permit Federal, State, local, and Tribal officials, as well as foreign officials who submit a request through a U.S. Federal government agency, to obtain beneficial ownership information for authorized activities related to national security, intelligence, and law enforcement.
 - Financial institutions will also have access to beneficial ownership information in certain circumstances, with the consent of the reporting company. Those financial institutions' regulators will also have access to beneficial ownership information when they supervise the financial institutions.

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Sample FAQs

- How do I report my company's beneficial ownership information?

If you are required to report your company's beneficial ownership information to FinCEN, you will do so electronically through a secure filing system available via FinCEN's website. This system is currently being developed and will be available before your report must be filed.

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Sample FAQs

- Where can I find the form to report?

Answer: The form to report beneficial ownership information can be found online. It can either be filled out online and submitted through the FinCEN portal, or it can be submitted as a PDF.

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Sample FAQs

- What if one of the people I have to report won't give me their information? What then? What can I tell them to motivate them to give me what I need so I don't get in trouble?

Answer: FinCEN clarified that reporting companies and individuals (e.g., the BOIR filer, Senior Officer of a company, individual) can be liable for willful CTA violations. They also specifically call out that a beneficial owner or company applicant can be held liable for refusing to provide required information to a reporting company and that an enforcement action can be brought against an individual who willfully causes a reporting company's failure to submit complete or updated beneficial ownership information to FinCEN. This would include a beneficial owner or company applicant who willfully fails to provide required information to a reporting company.

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Sample FAQs

- Is a trust considered a reporting company if it registers with a court of law for the purpose of establishing the court's jurisdiction over any disputes involving the trust?
 - No, the registration of a trust with a court of law merely to establish the court's jurisdiction over any disputes involving the trust does not make the trust a reporting company.

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Sample FAQs

- Can a parent company file a single BOI report on behalf of its group of companies?
 - No, any company that meets the definition of a reporting company and is not exempt is required to file its own BOI report.

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Model Engagement Letter Language

Unless we otherwise expressly agree, all federal or state tax returns — and any other type of federal or state information reporting, including, but not limited to, beneficial ownership reporting required under 31 U.S.C. § 5336 — necessitated by any entity we create or any other work we perform during this engagement will be completed and filed by some other party. You must notify that other party of the possible need to complete and file such tax returns or other reporting and will, if necessary, provide that other party with copies of documents that we prepare during this engagement. You must retain that other party's tax return and information reporting services on your own, and fees that other party may charge for those services will be in addition to any fees or expenses we charge you. We do not have any compliance procedures to remind you of the need to complete and file such tax returns or any other information reporting.

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Questions?

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