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[Corporate
Transparency Act
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Authors:

[Asia B. Wright](#)
[Alan K. MacDonald](#)

Reporting Under the Corporate Transparency Act – Is My Company Exempt?

The reporting requirements of the Federal Corporate Transparency Act (CTA)^[1] will go into effect beginning on January 1, 2024. The goal of the CTA is to prevent and combat money laundering, terrorist financing, corruption, tax fraud, and other illicit activity by requiring companies to disclose information about their ownership to a database maintained by the Financial Crimes Enforcement Network (FinCEN), a bureau of the U.S. Department of the Treasury.^[2]

The CTA exempts entities falling into one of 23 categories from the beneficial ownership reporting obligation. For example, several exemptions apply to businesses in federally regulated industries that are already directed by law to report the beneficial ownership information that the CTA requires. Businesses exceeding a certain size, measured by employees and revenue, may also qualify for an exemption. As a result, the burden of CTA reporting is likely to fall most heavily on small for-profit businesses.

This article briefly summarizes CTA's 23 exemptions.^[3] A number of the exemptions are subject to conditions that are nuanced and can be complicated. It would be prudent to seek legal advice if you believe your company may qualify for an exemption.

Businesses Operating Through Affiliated Entities

Three exemptions have conditions that may present the most challenges for small businesses to navigate, particularly businesses operating through multiple subsidiaries and affiliates.

Large Operating Company

Large operating companies are defined as any entity with:

- a physical operating presence in the United States,

- more than 20 full-time employees (people working on average at least 30y hours per week) in the U.S., and
- has reported more than \$5 million in gross income on its federal income tax for the previous year.

The CTA regulations allow companies under common control to rely on the gross revenue reported on a consolidated tax return. However, only the company that is the actual employer of an individual can count that individual as a full-time employee.

The revenue condition depends on revenue actually reported on the prior year's tax return. For example, companies on track to have revenue exceeding \$5 million for the first time in 2023 will not be exempt from reporting because they will not file a 2023 tax return until after the January 1, 2024 CTA filing deadline. A company created in 2023 will likely be a reporting company in 2024, even if successful soon enough to have gross revenue of \$5 million in 2024, because it will not file its 2024 tax return until after January 1, 2025.

Reporting companies have a duty to update their beneficial ownership information when changes occur.^[4] A company relying on the large operating company exemption in Year 1 but at risk of reporting gross revenue of less than \$5 million for Year 2 must remain aware of the duty to update its beneficial ownership reports within 90 days of the event that triggers the change in its status. In this case, the triggering event would be the filing of the Year 2 income tax return. The duty to update also applies if the company reduces its staff to fewer than 20 full-time employees.

Subsidiaries Controlled or Wholly Owned By Exempt Entities^[5]

Subsidiaries controlled or wholly owned by exempt entities are also exempt from the CTA reporting requirements, except when the subsidiary's parent is one of the following entities:

- a pooled investment vehicle,
- a money transmitting or money service business,
- an entity that operates exclusively to provide financial assistance to or hold governance rights over tax-exempt entities, or

- an inactive entity.

If the parent company relies on, but thereafter fails to qualify for, the large operating company exemption, then the subsidiary will no longer be exempt.

Inactive Entity

Inactive entities must meet all of the following conditions:

- it existed before January 1, 2020;
- is not actively engaged in business;
- is not owned in whole or in part by a foreign person;
- has not had an ownership change in the last twelve months;
- has not received or sent more than \$1,000 through a financial account in the last twelve months; and
- does not have any assets of any kind.

Regulated Industries

Several exemptions apply to entities in more heavily regulated industries. Companies in the financial services, investment, and insurance industries have been required by preexisting laws to collect, and in some instances report, information about their beneficial owners, which is available to law enforcement agencies combatting money laundering, tax fraud, and other illicit activities.

Banking Institutions

Banking institutions already collect beneficial ownership information about their customers as required by regulations adopted by FinCEN under the U.S. Patriot Act^[6] and the Bank Secrecy Act^[7].

These include:

- banks and credit unions
- depository institution holding companies (bank and savings and loan holding companies)
- money services businesses^[8]

Companies and Investment-related Businesses

Companies and investment-related businesses registered with the Securities and Exchange Commission or other agencies which collect, and in some cases disclose, information about their beneficial owners.

These include:

- Public companies that file periodic reports with the SEC
- Securities broker dealers
- Securities exchanges and clearing agencies
- Registered investment companies and registered investment advisers
- Venture fund capital advisers
- Other entities registered with the SEC under the Exchange Act
- Accounting firms registered with the Public Company Accounting Oversight Board
- Companies registered with Commodity Futures Trading Commission

Other exempt entities

- Regulated public utilities providing telecommunications services, electrical power, natural gas, or water and sewer services within the United States.
- Financial market utilities designated by the Financial Stability Oversight Council.

Insurance Companies

Insurance companies and state-licensed insurance producers, overseen by state insurance commissions, are also exempt from reporting under the CTA as long as they have an operating presence at a physical office in the United States.

Tax-Exempt Entities

Non-profit entities are most often organizations created by a filing with a secretary of state or tribal authority. The exemption applies to:

- Tax-exempt organizations under section 501(c) of the Internal Revenue Code.
- Tax-exempt political organizations organized and operating to influence legislation or the appointment or election of public officials.
- Charitable trusts.
- Entities that assist tax-exempt entities and meet the following four requirements:
 - operate exclusively to provide financial assistance to or hold governance rights over any of the excluded tax-exempt entities;
 - are organized under U.S. federal or state law;
 - are beneficially owned or controlled exclusively by one or more U.S. citizens or lawfully admitted for permanent residence; and
 - derive at least a majority of its funding or revenue from one or more U.S. citizens or lawfully admitted for permanent residence.

Other Exemptions

- Domestic government authorities.
- Private investment funds operated or advised by a registered investment adviser or an exempt financial institution (“pooled investment vehicle”), but not if formed under the laws of a foreign country.[\[9\]](#)

This article identifies key provisions of the Corporate Transparency Act and the related regulations but is not intended as a comprehensive summary. Frost Brown Todd attorneys will be available to answer questions and assist its clients who will be filing their own CTA reports. If you have any questions about this article, please contact the authors or any attorney with Frost Brown Todd’s

Corporate Transparency Act Team.

Frost Brown Todd's Corporate Transparency Act Team is staying up to date on the important rule changes that will likely have significant impacts on your business operations. Click below to read the latest information about the Corporate Transparency Act.

- [**Corporate Transparency Act: Who Can Exert Substantial Influence on My Company? Part I**](#)
- [**Corporate Transparency Act: Who Can Exert Substantial Influence on My Company? Part II**](#)
- [**Reporting Under the Corporate Transparency Act – Is My Company Exempt?**](#)
- [**FinCEN Announces Proposed Solution to Disclosure Dilemma in the Corporate Transparency Act**](#)
- [**Portfolio Company Reporting Under the Corporate Transparency Act**](#)
- [**The Corporate Transparency Act: Considerations for Effectively Using the FinCEN Identifier**](#)
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[1] 31 U.S.C. § 5336, enacted as part of the National Defense Authorization Act for Fiscal Year 2021.

[2] Beneficial Ownership Information Reporting Requirements, Adopting Release 87 FR 59498 (Sept. 30, 2022).

[3] BOI Reporting Requirements, Small Entity Compliance Guide, September 2023,

https://www.fincen.gov/sites/default/files/shared/BOI_Small_Compliance_Guide.pdf

[4] 31 CFR §§1010.380(a)(1)(iii) and (iv).

[5] "While hewing to the statutory language, the interpretation

prevents entities that are only partially owned by exempt entities from shielding all of their ultimate beneficial owners—including those that beneficially own the entity through a non-exempt parent—from disclosure. FinCEN does not need to add ‘wholly’ before ‘controlled’ because FinCEN assesses that the latter covers the intended concept of control set out in the CTA.” 87 FR 59543 at note 211.

[\[6\]](#) Public Law 107-56

[\[7\]](#) 31 U.S.C.A. § 5311, *et seq.*

[\[8\]](#) FinCEN has made it clear that this exemption applies to all money services businesses registered under 31 CFR 1022.380, including money transmission businesses.

[\[9\]](#) 31 CFR §1010.380(b)(2)(iii).

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