

THE CORPORATE TRANSPARENCY ACT QUESTIONS AND CONSIDERATIONS

Purpose of this document: This document provides a starting-point for discussions about the Corporate Transparency Act (the “CTA”) including considerations about who will be subject to CTA and what information is required.

BIG PICTURE:

- Determine if your entity is a Reporting Company or Exempt (Part One)
- Determine who are the Beneficial Owners and Company Applicants (Part Two)
- Determine when the entity needs to report (Part Three)
- Determine what information must be reported (Part Four)
- Review things to remember and consider (Part Five)
 - Including Penalties

Background about the CTA:

- The CTA was enacted on Jan. 1, 2021, to reduce terrorist financing, money laundering, and other illicit activities by increasing transparency and creating additional reporting requirements for businesses. The CTA went into effect on Jan. 1, 2024.
- As a result of the CTA, millions of small businesses, i.e. Reporting Companies, will be required to disclose information to the U.S. Department of Treasury’s Financial Crimes Enforcement Network (FinCEN).

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Part One: Is the Entity a Reporting Company or Exempt?

Q1: Is the Entity a Reporting Company?

- A **Reporting Company** is a domestic or foreign corporation, LLC, or similar entity that was formed or registered to do business in any state or jurisdiction by filing with a secretary of state or other similar office.
- If yes, the Reporting Company will in most cases be subject to the CTA.
- If no, the Entity is not a reporting company and not subject to the CTA.

Q2: Does the Entity Qualify for an Exemption?

- The following 23 types of entities are exempt from the CTA's reporting requirements:
 - Securities reporting issuer
 - Governmental authority
 - Bank
 - Credit union
 - Depository institution holding company
 - Money services business
 - Broker or dealer in securities
 - Securities exchange or clearing agency
 - Other Exchange Act registered entity
 - Investment company or investment adviser
 - Venture capital fund adviser
 - Insurance company
 - State-licensed insurance producer
 - Commodity Exchange Act registered entity
 - Accounting firm
 - Public utility
 - Financial market utility
 - Pooled investment vehicle
 - Tax-exempt entity
 - Entity assisting a tax-exempt entity
 - Large operating company
 - Subsidiary of certain exempt entities
 - Inactive entity
- If yes, the Entity is exempt, and not subject to the CTA.
- If no, the Reporting Company is subject to the CTA and should proceed.

Part Two: Beneficial Owners and Company Applicants

Non-Exempt Reporting Companies must report information regarding:

- (i) The Company Itself – *see Part One above*
- (ii) The Beneficial Owners
- (iii) The Company Applicant

BENEFICIAL OWNERS:

Beneficial Owners are individuals who directly or indirectly, through any contract, arrangement, understanding, relationship, or otherwise:

- Substantial Control. Exercise substantial control over the entity.
- Ownership Interest. Own or control not less than 25% of the ownership interests of the entity.

Q1: Does the person have substantial control or own not less than 25% of the ownership interests? Or both?

- If yes, the person must be reported as a Beneficial Owner (subject to exemptions).
- If no, the person is not considered a Beneficial Owner and does not need to be reported as one.

Beneficial Owner Exemptions

- Individuals who may otherwise be considered a Beneficial Owner are *exempt if they are*:
 - Minors;
 - Creditors;
 - Individuals acting as a nominee, intermediary, custodian, or agent on behalf of another individual;
 - Individuals acting solely as an employee and whose control over or economic benefits from such entity is derived solely from the person's employment status; or
 - Individual whose only interest is through a right of inheritance.

Q2: Is the particular Beneficial Owner Exempt from Reporting?

- If yes, that particular Beneficial Owner will not need to be included in the reporting.
- If no, the Beneficial Owner must be included in the reporting.

COMPANY APPLICANT:

Q1: Is the individual a Company Applicant?

- A "**Company Applicant**" is the individual who directly files the document that creates the reporting company or registers the reporting company to do business in the US, and the individual who is primarily responsible for directing or controlling the CTA filing.
- If yes, the Reporting Company must report the Company Applicant (subject to when the entity was formed).
- If no, the individual will not need to be reported as a Company Applicant.

Q2: Was the Company formed on or after January 1, 2024?

- Only Reporting Companies created Jan. 1, 2024 or later need to report Company Applicants.
- If yes, the Reporting Company will need to report a Company Applicant.
- If no, the Reporting Company will not need to report a Company Applicant.

Part Three: Deadlines for Reporting

Q1: When was the Entity Formed?

- Formed Before January 1, 2024 → Report due at the end of December 2024.
 - *Example:* If formed in 2023, the Report is due before December 31, 2024.
- Formed in 2024 → Report due 90 days after formation.
 - *Example:* If formed on January 15, 2024, the Report is due before ~April 14, 2024.
- Formed in 2025 or after → Report due 30 days after formation.
 - *Example:* If formed on January 1, 2025, the Report is due before January 31, 2025.

Q2: What about changes in reported information (including Beneficial Ownership or Company Information)?

- Changes need to be updated after the Reporting Company submits their Report with FINCEN. The Reporting Company must correct its Report no later than 30 days after the Reporting Company has reason to know or becomes aware of a reported inaccuracy.

Part Four: Information to Report and Where to Report

Q1: What information is required for Reporting Companies?

- Name (including d/b/a)
- Business Address
- Jurisdiction of formation
- Unique identification number

Q2: What information is required for Beneficial Owners and Company Applicants?

- Legal name
- Date of birth
- Address
- Unique identifying number from an acceptable ID document

Q3: Where does the Reporting Company Report?

- Reporting should be submitted through FinCEN's website - <https://boiefiling.fincen.gov>

Part Five: Other Things to Know and Consider

Penalties.

- Failure to comply with the CTA can lead to civil or criminal penalties. Reporting violations include both (a) willfully providing false information to FinCEN and (ii) willfully failing to report complete and full information to FinCEN.
- These penalties may lead to fines of up to \$10,000 or imprisonment.
- There are penalties for not filing an initial report and failing to update or amend reports with complete and full information.

Distinguishing Between Wisconsin DFI Reporting and CTA Reporting.

- Filing Articles of Organization (or similar articles) with Wisconsin's Department of Financial Institutions (or similar office) is **not** the same as filing with FinCEN for the CTA. The CTA, a federal requirement, is different than the required Wisconsin disclosures.
- For example, the Annual Report submitted to Wisconsin's DFI does **not** satisfy the required disclosures to FinCEN under the CTA.

Other Resources.

- FinCEN FAQs - [LINK](#)
 - Includes flowcharts
- FinCEN Brochure - [LINK](#)
- FinCEN Compliance Guide - [LINK](#)
- FinCEN Contact and Chat – [LINK](#)
- "Corporate Transparency Act: Prepare for Compliance Now" by Attorney Kent L. Schlienger
 - Published in *Wisconsin Lawyer*, The Official Publication of The State Bar of Wisconsin. 96 Wis. Law. 10-15 (December 2023). - [LINK](#)

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