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## Reporting Requirements Under the Corporate Transparency Act

The Corporate Transparency Act (“CTA”), effective as of January 1, 2024, requires certain businesses, in the absence of an exemption, to report to the Financial Crimes Enforcement Network (“FinCEN”) of the United States Treasury, information regarding their “beneficial owners.” The CTA intends to create a “database” of these “beneficial owners” for law enforcement to utilize to help investigate and target anonymous shell companies, which can be utilized for money laundering, terrorism, and other criminal activity to the detriment of the general public.

Under the CTA, a reporting company is required to report information on their beneficial owners (i) within ninety (90) days for companies formed after January 1, 2024, or (ii) by January 1, 2025, for companies that existed prior to January 1, 2024. Since the CTA imposes significant penalties for non-compliance, it is critical for companies to determine whether they are subject to the CTA and, if so, to submit the required report prior to the applicable deadline.

### Who is required to report?

Business entities that are required to report under the CTA (referred to as “reporting companies”) are: (1) corporations, limited liability companies, and other business entities, which are created in the United States by the filing of a document with a secretary of state or similar officer within a state, and (2) foreign companies that are authorized to do business in the United States by having made a similar filing. General partnerships, sole proprietorships and joint ventures are not required to report.

The CTA exempts twenty-three (23) types of entities from the reporting requirements including publicly traded companies, banks, securities brokers or dealers, insurance companies, accounting firms, tax-exempt entities, large operating companies, and subsidiaries of certain exempt entities.

It is anticipated that the “large operating company” exemption will be particularly important for companies to assess. Under this exception, a company is exempt from reporting if that entity employs more than twenty (20) full-time employees in the United States, has an operating presence at a physical office within the United States, and the entity filed a federal income tax return for the previous year demonstrating more than \$5,000,000 in gross receipts or sales. If a company is exempt, it is not required to take any action with respect to the CTA, though caution is recommended given the potential penalties for non-compliance. Thus, a company should thoroughly review and confirm its exemption status to ensure it is warranted.

### What is required to be reported?

Reporting companies are required to provide certain information regarding their beneficial owners. Beneficial owners are the individuals who, directly or indirectly, (1) exercise substantial control over a reporting company or (2) own or control at least 25% of the ownership interests of a reporting company. Individuals with substantial control include senior officers, such as the president, chief executive officer, chief financial officer, general counsel, individuals with the ability to appoint or remove certain senior officers, important decision makers, or other individuals who have substantial control over the reporting company.

A reporting company is required to report to FinCEN for each beneficial owner, their name, date of birth, and residential address and provide a copy of each beneficial owner's United States passport or state-issued driver's license or identification document. Companies can complete a CTA filing by visiting the FinCen website [here](#).

### **What are the penalties for non-compliance?**

The willful failure to comply with the CTA reporting requirements (or the willful provision of false or fraudulent information) may result in civil penalties of up to \$500 for each day the violation continues and/or criminal penalties of up to two (2) years' imprisonment and a fine of up to \$10,000. Senior officers of an entity that fails to complete its reporting requirements may also be held personally accountable for such failure.

### **Is the CTA constitutional?**

The constitutionality of the CTA has already been challenged. On March 1, 2024, a federal judge in Alabama issued an order declaring the CTA unconstitutional and enjoining its application against the plaintiffs in that action, including members of the National Small Business Association. The government is appealing that decision. There are several other challenges to the CTA currently pending throughout the country. However, with the ruling in the Alabama case limited to the named plaintiffs, non-exempt companies are still required to comply with the CTA reporting requirements.

### **Compliance questions?**

If you have questions about the CTA, including whether your company is a reporting company or who your beneficial owners are, please do not hesitate to contact us for assistance. Our corporate and regulatory enforcement groups are well versed in the CTA and can help with any compliance questions you may have. For more information, please reach out to [David Polazzi](#) or [Brian Waller](#).

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