

Joint Council Breakfast
**The Corporate Transparency Act:
What Estate Planning
Professionals Need to Know**

Melissa L. Wiley

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FinCEN Estimates:

- 32.6 million existing reporting companies
- 5 million new reporting companies each year

What Does the CTA Require?

- Each reporting company shall submit to FinCEN a report that identifies each beneficial owner of the applicable reporting company and each applicant with respect to that company.



“Reporting Company”

- The term **reporting company** means a corporation, limited liability company (LLC), or other “similar entity” that is:
 - Created by the filing of a document with a secretary of state or similar office under the law of a State or Indian Tribe - **a domestic reporting company**; or
 - Formed under the law of a foreign country and registered to do business in the U.S. by the filing of a document with a secretary of state or a similar office under the laws of a State or Indian Tribe - **a foreign reporting company**.

23 Exemptions

- Governmental authorities
- Securities issuers (e.g., public companies)
- Banks
- Credit unions
- Bank holding companies
- Money transmitters
- Broker/dealers
- Securities exchanges and clearing agencies
- Other Securities Exchange Act of 1934 registered entities
- Investment companies and advisers
- Venture capital fund advisers
- Insurance companies
- State-licensed insurance producers
- Commodity Exchange Act registered entities
- Public accounting firms
- Public utilities
- Financial market utilities
- Pooled investment vehicles
- Tax exempt entities
- Entities assisting tax exempt entities
- Subsidiaries of certain of the above-named exempt companies

23 Exemptions

Dormant Company

- in existence on or before January 1, 2020
- not engaged in active business
- not owned, directly or indirectly, by a foreign person
- in the previous 12 months, has not experienced an ownership change or sent/received (directly or indirectly) more than \$1,000
- does not hold any assets

Large Operating Company

- employs > 20 full-time employees in the U.S.
- filed a Federal tax return in the previous year with more than \$5M in gross receipts or sales
- has an operating presence at a physical office in the U.S.

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“Beneficial Owner”

The term **beneficial owner** means an individual who, **directly or indirectly**:

- Exercises **substantial control** over the entity; or
- **Owns or controls** at least 25% of the ownership interests of the entity

Does **not** include non-senior officer employees whose control over or economic benefits from the reporting company are derived solely from their employment status.

Directly or Indirectly

- Through a variety of means including:
 - board representation;
 - ownership or control of a majority of the voting power or voting rights of the reporting company;
 - rights associated with any financing arrangement or interest in a company;
 - control over one or more intermediary entities that separately or collectively exercise substantial control over a reporting company;
 - arrangements or financial or business relationships, whether formal or informal, with other individuals or entities acting as nominees; or
 - *any other contract, arrangement, understanding, relationship, or otherwise.*

Substantial Control

- Substantial control (*directly or indirectly*) includes:
 - Senior officers of the reporting company (*i.e.*, president, CFO, GC, CEO, COO or similar)
 - Authority to appoint or remove any senior officer or a majority of the board of directors
 - Direction, determination, or substantial influence over important decisions of the reporting company
 - *Any other form of substantial control over the reporting company*

Ownership

- Ownership interest is broadly defined:
 - Interest can be **direct or indirect** (through joint ownership, trust, or control of interest by another individual)
- Not just stock, voting and non-voting shares, capital or profit interests
 - Any interest convertible into one of the interests described
 - Any put, call, straddle or other option of buying or selling
- For trusts, includes:
 - Trustee or other individual with authority to dispose of trust assets
 - Certain beneficiaries
 - Grantors or settlors with right to revoke or withdraw assets

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“Applicant”

- The term **applicant** means the individual who:
 - **Directly files** the document that (i) creates a domestic reporting company or (ii) first registers a foreign reporting company; or
 - Is **primarily responsible** for directing or controlling such filing (if more than one individual is involved in the filing).

Required Information: Reporting Companies

- ✓ The full legal name of the reporting company and any DBA names

- ✓ Domestic reporting company:
 - Address of principal place of business
 - State or Tribal jurisdiction of formation
 - IRS TIN (e.g., EIN)

- ✓ Foreign reporting company:
 - Address of primary location in the US
 - State or Tribal jurisdiction where first registered in the US
 - IRS TIN, or if no TIN then foreign tax ID number and taxing jurisdiction

Required Information: Beneficial Owners

- ✓ Full legal name
- ✓ Date of birth
- ✓ Residential street address
- ✓ A unique identifying number from one of the following:
 - A non-expired U.S. passport
 - A non-expired U.S. identification document
 - A non-expired U.S. driver's license
 - A non-expired foreign passport (only if no other documents)
- ✓ Image of document from which number was obtained
- ✓ Alternative: [FinCEN identifier](#)

Required Information: Applicants

- ✓ Full legal name
- ✓ Date of birth
- ✓ Current address:
 - **Business:** applicants who file documents in the course of their business may use business street address
 - **Residential:** in any other case, must use residential street address
- ✓ Unique identifying number and image of the document from which it came (same list)
- ✓ Alternative: **FinCEN identifier**
- ✓ **NOTE:** only required for *new* reporting companies, not those already in existence on January 1, 2024

Required Reports

Initial Report

- Entity formed on/after **January 1, 2024**: within **30** days of date of formation
- Entity formed before **January 1, 2024**: no later than January 1, 2025

Updated Report

- Filed within **30** days of change to previously submitted information
- *E.g.*, reporting company meets criteria for exemption after filing an initial report; beneficial owner dies – updated report to remove deceased beneficial owner, list new beneficial owner(s)

Corrected Report

- Filed within **30** days after reporting company becomes aware or has reason to know that information contained in a report was inaccurate when filed

Penalties

Reporting Violations:

- Willfully providing, or attempting to provide, false or fraudulent information to FinCEN (*directly or indirectly*)
- Willfully failing to report complete or updated information to FinCEN

Penalties

- Shall pay a civil penalty of up to \$500 per day that the violation continues or has not been remedied;
and
- May be fined up to \$10,000, imprisoned for up to 2 years, or both



Disclosures

- FinCEN may disclose beneficial ownership information for limited, specified uses **upon request** through (to be finalized) protocols:
 - Federal agencies engaged in national security, intelligence, or law enforcement activity, *for use in furtherance of such activity*;
 - State, local and Tribal law enforcement agencies *for use in criminal or civil investigations*, if authorized by a court of competent jurisdiction;
 - Foreign law enforcement agencies, prosecutors or judges *when requested through a Federal agency, and required to comply with a treaty* (e.g., an income tax treaty or tax information exchange agreement) or *limited to use in an authorized investigation or national security or intelligence activity*.

FinCEN may reject a request for any number of reasons, including “**other good cause.**”

Disclosure to IRS

- “Officers and employees of the Department of the Treasury may obtain access to beneficial ownership information for **tax administration purposes**”
- “Tax administration” is used as defined in section 6103(b)(4), and thus includes:
 - assessment
 - collection
 - enforcement
 - litigation
 - publication and statistical gathering



Questions?



Melissa L. Wiley
MWiley@capdale.com
202.862.7852