

Are You Exempt from Reporting Under the Corporate Transparency Act?

January 9, 2024

[Duane Morris LLP](#) - Thomas R Schmuhl, Jocelyn Margolin Borowsky, Joel N. Ephross, Bruce H. Jurist, [Hope P. Krebs](#) and Lee J. Potter, Jr.

The beneficial ownership information reporting rule implementing Section 6403 of the Corporate Transparency Act (CTA) became effective on January 1, 2024. Under the CTA, every “reporting company” must file a beneficial ownership information (BOI) report with the U.S. Financial Crimes Enforcement Network (FinCEN). With the CTA now in effect, many will face the threshold question: “Does my entity need to file a BOI report?”

Answering this question involves a three-step process:

- First, you must determine if the entity is a reporting company. A reporting company is defined as a corporation, limited liability company, partnership or other entity (i) created by the filing of a document with a secretary of state (or similar office) within the United States or (ii) formed under the law of a foreign country and registered to do business in the United States by the filing of a document with a secretary of state (or similar office) in the United States.
- Second, if you have such an entity, you must determine if it fits within one of the 23 types of entities that are exempt from having to file a BOI report and are described below.
- Third, if the entity is not exempt from BOI reporting, you must determine the deadline for filing the initial BOI report.
 - Entities existing or registered to do business before January 1, 2024, must file their initial BOI report with FinCEN by January 1, 2025.
 - Entities created or registered to do business on or after January 1, 2024, and before January 1, 2025, have 90 days following their creation or registration to make such a filing.
 - Entities created or registered to do business on or after January 1, 2025, have only 30 days to make their initial FinCEN filing.

The 23 categories of exemptions from the BOI reporting rule are specified in the CTA and in the [final rule](#) implementing the reporting requirement. They are also described in FinCEN’s [Small Entity Compliance Guide](#).

An entity that qualifies under any of these 23 exemptions will not need to file a BOI report, unless the company later becomes nonexempt. It is possible that a company may qualify for more than one exemption. The specific criteria for each exemption are provided by FinCEN in Section 1.2 of the Small Entity Compliance Guide and are described below. Note that recently formed companies in some cases may not initially qualify for an exemption, and thus will be subject to the BOI reporting rule at the outset even if they later become exempt.

Exemptions

The following are exempt from reporting under the CTA.

1. Securities Reporting Issuer

Any issuer of securities that is (A) an issuer of a class of securities registered under Section 12 of the Securities Exchange Act of 1934, or (B) required to file supplementary and periodic information under Section 15(d) of the Securities Exchange Act of 1934.

2. Governmental Authority

Any entity that (A) is established under the laws of the United States, an Indian tribe, a state or a political subdivision of a state, or under an interstate compact between two or more states, and (B) exercises governmental authority on behalf of the United States or any such Indian tribe, state or political subdivision.

3. Bank

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 202(a) of the Investment Advisers Act of 1940.

4. Credit Union

Any federal credit union or state credit union, as those terms are defined in Section 101 of the Federal Credit Union Act.

5. Depository Institution Holding Company

Any bank holding company as defined in Section 2 of the Bank Holding Company Act of 1956 or any savings and loan holding company as defined in Section 10(a) of the Home Owners' Loan Act.

6. Money Transmitter Business

Any money transmitting business registered with FinCEN under 31 U.S.C. 5330, and any money services business registered with FinCEN under 31 CFR 1022.380.

7. Broker or Dealer in Securities

Any broker or dealer, as those terms are defined in Section 3 of the Securities Exchange Act of 1934, that is registered under Section 15 of that act.

8. Securities Exchange or Clearing Agency

Any exchange or clearing agency, as those terms are defined in Section 3 of the Securities Exchange Act of 1934, that is registered under Sections 6 or 17A of that act.

9. Other Exchange Act Registered Entity

Any entity other than that described in exemption 1 (securities reporting issuer), exemption 7 (broker or dealer in securities) or exemption 8 (securities exchange or clearing agency) that is registered with the SEC under the Securities Exchange Act of 1934.

10. Investment Company or Investment Adviser

Any entity that is (A) an investment company as defined in Section 3 of the Investment Company Act of 1940, or is an investment adviser as defined in Section 202 of the Investment Advisers Act of 1940, and (B) registered with the SEC under the Investment Company Act of 1940 or the Investment Advisers Act of 1940.

11. Venture Capital Fund Adviser

Any investment adviser that (A) is described in Section 203(l) of the Investment Advisers Act of 1940 and (B) has filed Item 10, Schedule A and Schedule B of Part 1A of Form ADV, or any successor thereto, with the SEC.

12. Insurance Company

Any insurance company as defined in Section 2 of the Investment Company Act of 1940.

13. State-Licensed Insurance Producer

Any entity that (A) is an insurance producer that is 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.

14. Commodity Exchange Act Registered Entity

Any entity that (A) is a registered entity as defined in Section 1a of the Commodity Exchange Act or (B) is (1) a futures commission merchant, introducing broker, swap dealer, major swap participant, commodity pool operator or commodity trading advisor, each as defined in Section 1a of the Commodity Exchange Act, or a retail foreign exchange dealer as described in Section 2(c)(2)(B) of the Commodity Exchange Act and (2) registered with the Commodity Futures Trading Commission under the Commodity Exchange Act.

15. Accounting Firm

Any public accounting firm registered in accordance with Section 102 of the Sarbanes-Oxley Act of 2002.

16. Public Utility

Any entity that is a regulated public utility as defined in 26 USC 7701(a)(33)(A) that provides telecommunications services, electrical power, natural gas, or water and sewer services within the United States.

17. Financial Market Utility

Any financial market utility designated by the Financial Stability Oversight Council under Section 804 of the Payment, Clearing and Settlement Supervision Act of 2010.

18. Pooled Investment Vehicle

Any pooled investment vehicle that is operated or advised by a person described in exemptions 3 (bank), 4 (credit union), 7 (broker or dealer in securities), 10 (investment company or investment adviser) or 11 (venture capital fund adviser).

19. Tax-Exempt Entity

Any entity that is (A) an organization that is described in Section 501(c) of the Internal Revenue Code of 1986 (determined without regard to Section 508(a) of the code) and exempt from tax under Section 501(a) of the code—except that in the case of any such organization that ceases to be described in Section 501(c) and exempt from tax under Section 501(a), such organization shall be considered to continue to be described as a tax-exempt entity for the 180-day period beginning on the date of the loss of such tax-exempt status—(B) a political organization, as defined in Section 527(e)(1) of the Internal Revenue Code, that is exempt from tax under Section 527(a) of the code, or (C) a trust described in paragraph (1) or (2) of Section 4947(a) of the Internal Revenue Code. Note that not all tax-exempt organizations fall under this exemption. A religious organization that is tax-exempt under Section 501(d) of the code will not qualify for this exemption.

20. Entity Assisting a Tax-Exempt Entity

Any entity that (A) operates exclusively to provide financial assistance to, or hold governance rights over, any entity described in exemption 19 above (tax-exempt entity), (B) is a United States person, (C) is beneficially owned or controlled exclusively by one or more United States persons that are citizens or lawfully admitted for permanent residence, and (D) derives at least a majority of its funding or revenue from one or more United States persons that are citizens or lawfully admitted for permanent residence.

21. Large Operating Company

Any entity that (A) employs more than 20 full-time employees in the United States, with “full time employee in the United States” having the meaning provided in 26 CFR 54.4980H-1(a) and 54.4980H-3—except that the term “United States” as used in those sections of the CFR has the meaning provided in 31 CFR 1010.100(hhh)—(B) has an operating presence at a physical office within the United States, and (C) filed a federal income tax or information return in the United States for the previous year demonstrating more than \$5 million in gross receipts or sales, as reported as gross receipts or sales (net of returns and allowances) on the entity's IRS Form 1120, consolidated IRS Form 1120, IRS Form 1120-S, IRS Form 1065 or other applicable IRS form, excluding gross receipts or sales from sources outside the United States, as determined under federal income tax principles. For an entity that is part of an affiliated group of corporations within the meaning of 26 USC 1504 that filed a consolidated return, the applicable amount shall be the amount reported on the consolidated return for such group.

22. Subsidiary of Certain Exempt Entities

Any entity whose ownership interests are controlled or wholly owned, directly or indirectly by one or more entities described in exemptions 1, 2, 3, 4, 5, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 19 or 21 set forth above. Note that this exemption applies to only some, and not all, of the above exemptions. While the “wholly owned” test is likely to be straightforward to apply, the control test for this exemption may require a more detailed analysis.

23. Inactive Entity

Any entity that (A) was in existence on or before January 1, 2020, (B) is not engaged in active business, (C) is not owned by a foreign person, whether directly or indirectly, wholly or partially, (D) has not experienced any change in ownership in the preceding 12-month period, (E) has not sent or received any funds in an amount greater than \$1,000, either directly or through any financial account in which the entity or any affiliate of the entity had an interest, in the preceding 12-month period, and (F) does not otherwise hold any kind or type of assets, whether in the United States or abroad, including any ownership interest in any corporation, limited liability company or other similar entity. Note that this exemption does not apply to inactive entities formed after January 1, 2020, and has other important limitations.

<https://www.lexology.com/library/detail.aspx?g=55f02b50-af28-4e5c-b831-37cd3acea97e>