

# CORPORATE TRANSPARENCY ACT: New Beneficial Ownership Reporting Creates Efficiencies for Banks

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Money laundering has posed a substantial threat to the U.S. economy for decades and financial institutions have served as a front line of defense under anti-money laundering regulations such as the Customer Due Diligence Requirements for Financial Institutions rule (the “CDD”) issued by U.S. Treasury Department’s Financial Crimes Enforcement Network (“FinCEN”). Banks are all too familiar with chasing down information on owners with 25% or more of the equity interests in legal entity customers and natural persons with “significant responsibility to control, manager, or direct” a legal entity customer. However, beginning Jan. 1, 2024, the previously enacted Corporate Transparency Act (the “CTA”) requires certain business entities, each defined as a “reporting company,” to self-report similar information to FinCEN, creating an opportunity to ease the information gathering requirements of banks.

## Who Must Report?

A “reporting company” includes any corporation, limited liability company, or other similar entity that is (i) created by filing a document with a secretary of state or similar office under the law of a State or Indian Tribe, or (ii) formed under the law of a foreign country and registered to do business in the U.S. by filing a document with a secretary of state or similar office under the law of a State or Indian Tribe [31 U.S.C.A. § 5336(a)(11)]. The CTA also provides a list of 23 categories of entities that are exempt from reporting requirements under the CTA. These exemptions exist because the entities are already highly regulated or subject to similar ownership reporting requirements. Banks, federal and state credit unions, bank holding companies, savings and loan holding companies, entities registered with the

Securities and Exchange Commission, and other categories of financial services companies are notably included in the list of entities exempt from the reporting requirements.

### What is in the Report?

A reporting company must identify each (i) beneficial owner of the reporting company, and (ii) applicant of the reporting company. Beneficial owners are individuals that exercise “substantial control” over a reporting company or own or control 25% or more of the ownership interests of the reporting company. Company applicants are individuals that directly file the document that creates the reporting company or are primarily responsible for directing or controlling the filing of the relevant document by another, if one or more individual is involved in the filing.

The following information is required for each beneficial owner and applicant: (a) full legal name, (b) date of birth, (c) current residential or business street address, (d) unique identifying number from an acceptable identification document (passport, driver’s license, etc.), and (e) an image of the identification document. Individuals may obtain a unique FinCEN identifier by reporting the information required above directly to FinCEN and thereafter may submit the FinCEN identification number in lieu of the requirements above.

The reporting company must also report the following information about itself: (A) full legal name, (B) any trade names, (C) complete current address (excluding PO boxes or corporate formation agents), (D) state, tribal, or foreign jurisdiction of formation, (E) the U.S. jurisdiction where a foreign reporting company first registered, and (F) Taxpayer Identification Number.

### When is the Report Due?

The formation/filing date of the reporting company determines when the CTA report is due. If the reporting company was formed/registered before Jan. 1, 2024, the reporting company has until Jan. 1, 2025 (one year after the effective date) to complete the report; provided, however, information regarding company applicants is not required. If the reporting company is formed/registered after Jan. 1, 2024, the report must be filed within 30 days of the earlier of the date it received actual notice of its creation/registration, or the creation/registration of the reporting company becomes public.

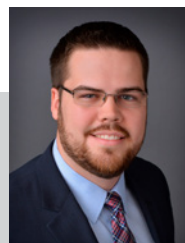
### Why Does the CTA Benefit Financial Institutions?

FinCEN is required to store the CTA report information in a secure nonpublic database known as the Beneficial Ownership Secure System (“BOSS”). A financial institution subject to customer due diligence requirements like the CDD or other anti-money laundering regulations may request information from BOSS to facilitate the bank’s reporting compliance; provided, however, the bank must obtain the reporting company’s consent to request the information. BOSS stands to not only help reduce fraud and criminal activity in the U.S. economy through information availability, but also simplify and significantly reduce the information reporting burden on the financial services industry. For avoidance of doubt, the CTA does not eliminate reporting requirements of financial institutions regarding their customers, but simply requires

those customers to already report that information in a format more readily accessible to financial institutions.

The effective date of the CTA is less than a year away, but banks still have plenty of time to prepare to utilize the CTA to their advantage. Financial institutions should review and revise existing privacy policies and customer agreements to provide for bank access to CTA information, revise loan document forms to include representations, warranties, and covenants related to the CTA, and provide internal training regarding the requirements and opportunities presented by the CTA. ■

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