

THE CORPORATE TRANSPARENCY ACT

PART 2 — EXEMPTIONS FROM THE REPORTING REQUIREMENTS

On January 1, 2021, Congress enacted the Corporate Transparency Act (the "CTA") as part of the Anti-Money Laundering Act of 2020 and its annual National Defense Authorization Act. The new legislation requires certain entities to report information about their owners, management and the individuals who helped create the entities to the U.S. Department of the Treasury's Financial Crimes Enforcement Network ("FinCEN"). The information reported to FinCEN is intended to assist law enforcement in combating money laundering, tax fraud, terrorist financing, and other unlawful activities that occur through shell and front companies.

This is the second article in a new series about the CTA. This edition will provide a more detailed look at the exemptions from reporting requirements under the CTA. The CTA takes effect on January 1, 2024, so it is crucial that you familiarize yourself with your company's potential reporting obligations now.

Which entities are exempt from the reporting requirements under the CTA?

The CTA specifically enumerates 23 exemptions from the definition of "reporting company." These exempt companies include the following:

Reporting Securities Issuers / Public Companies

- This exemption includes any issuer of securities (a) 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.

Government Authorities

- This exemption includes any entity that (a) is established under the laws of the U.S., a state, a political subdivision of a state, an interstate compact between states, or an Indian Tribe and (b) exercises governmental authority on its behalf.

Banks

- This exemption includes any bank 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.

Credit Unions

- This exemption includes any federal or state credit union defined in Section 101 of the Federal Credit Union Act.

Depository Institution Holding Companies

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

Money Services Businesses

- This exemption includes any (a) money transmitting business registered with FinCEN under 31 U.S.C. § 5330 or (b) money services business registered with FinCEN under 31 C.F.R. § 1022.380.

Brokers or Dealers in Securities

- This exemption includes any broker or dealer (a) defined in Section 3 of the Securities Exchange Act of 1934 and (b) registered under Section 15 of the Securities Exchange Act of 1934.

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Securities Exchanges or Clearing Agencies

- This exemption includes any exchange or clearing agency (a) defined in Section 3 of the Securities Exchange Act of 1934 and (b) registered under Sections 6 or 17(a) of the Securities Exchange Act of 1934.

Other Securities Exchange Act of 1934 Registered Entities

- This exemption includes any other entity registered with the Securities and Exchange Commission under the Securities Exchange Act of 1934.

Registered Investment Companies or Investment Advisers

- This exemption includes any investment company defined in Section 3 of the Investment Company Act of 1940 and any investment adviser defined in Section 202 of the Investment Advisers Act of 1940 registered with the Securities and Exchange Commission under the respective act.

Venture Capital Fund Advisers

- This exemption includes any investment adviser that (a) is described in Section 203(i) of the Investment Advisers Act of 1940 and (b) has filed Item 10, Schedule A, and Schedule B of Part 1A of Form ADV with the Securities and Exchange Commission.

Insurance Companies

- This exemption includes any insurance company defined in Section 2 of the Investment Company Act of 1940.

State-Licensed Insurance Producers

- This exemption includes any entity that (a) is a state-authorized insurance producer subject to supervision by the insurance commissioner or a similar official or agency and (b) has an operating presence at a physical office within the U.S.

Commodity Exchange Act Registered Entities

- This exemption includes any (a) registered entity defined in Section 1(a) of the Commodity Exchange Act or (b) (i) futures commission merchant, introducing broker, swap dealer, major swap participant, commodity pool operator, or commodity trading advisor defined in Section 1(a), or retail foreign exchange dealer defined in Section 2(c)(2)(B), of the Commodity Exchange Act and (ii) registered with the Commodity Futures Trading Commission.

Accounting Firms

- This exemption includes any public accounting firm registered under Section 102 of the Sarbanes–Oxley Act of 2002.

Public Utilities

- This exemption includes any entity that (a) is a regulated public utility defined in 26 U.S.C. 7701(a)(33)(A) and (b) provides telecommunications services, electrical power, natural gas, or water and sewer services within the U.S.

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Financial Market Utilities

- This exemption includes any financial market utility designated by the Financial Stability Oversight Council under Section 804 of the Payment, Clearing, and Settlement Supervision Act of 2010.

Pooled Investment Vehicles

- This exemption includes any pooled investment vehicle that is operated or advised by a bank, credit union, broker or dealer in securities, registered investment company or investment adviser, or venture capital fund adviser.

Tax-Exempt Entities

- This exemption includes any (a) organization defined in Section 501(c) and exempt from tax under Section 501(a) of the Internal Revenue Code, (b) political organization defined in Section 527(e)(1) and exempt from tax under Section 527(a) of the Internal Revenue Code, or (c) trust defined in paragraph (1) or (2) of Section 4947(a) of the Internal Revenue Code.

Entities Assisting a Tax-Exempt Entity

- This exemption includes any entity that (a) operates exclusively to provide financial assistance to, or hold governance rights over, any tax-exempt entity, (b) is a U.S. person, (c) is beneficially owned or controlled exclusively by U.S. persons that are U.S. citizens or lawfully admitted for permanent residence, and (d) derives at least a majority of its funding or revenue from U.S. persons that are U.S. citizens or lawfully admitted for permanent residence.

Inactive Entities

- This exemption includes any entity that (a) was in existence before January 1, 2020; (b) is not engaged in active business; (c) is not owned by a foreign person directly or indirectly, wholly or partially; (d) has not experienced any change in ownership in the preceding twelve months; (e) has not sent or received any funds greater than \$1,000, either directly or through any account the entity or an affiliate had an interest, in the preceding twelve months; and (f) does not hold any assets in the U.S. or abroad, including any ownership interests.

Large Operating Companies

- This exemption includes any entity that (a) employs more than 20 full-time employees in the U.S., (b) has an operating presence at a physical office within the U.S., and (c) reported more than \$5 million in gross receipts or sales from U.S. sources only on its prior year federal tax return.

Subsidiaries of Certain Exempt Entities

- This exemption includes any entity whose ownership interests are controlled or wholly owned, directly or indirectly, by any exempt entity, except money services businesses, pooled investment vehicles, entities assisting a tax-exempt entity, or inactive entities.

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FinCEN is currently in the process of creating the specific reporting system and additional regulations surrounding the CTA. Therefore, the information discussed in this article is subject to change. For more information on the Corporate Transparency Act and to further understand the extent of your company's reporting obligations, please read our other articles in this series: [The Corporate Transparency Act \(Parts 1-4\)](#). Or contact your Winstead relationship attorney or any of the following Winstead attorneys:

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