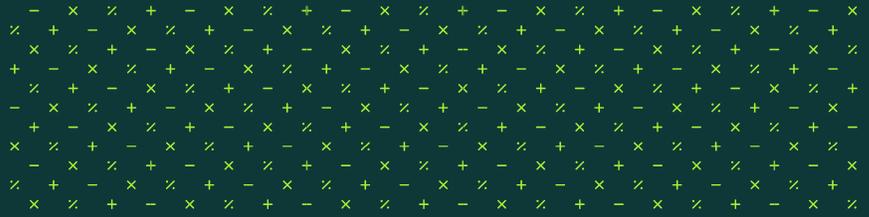




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Corporate Transparency Act

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Corporate Transparency Act (CTA)

- Enacted January 1, 2021
- Part of National Defense Authorization Act (a “must pass”)
- CTA represents most significant reformation of the Bank Secrecy Act (“BSA”) and related anti-money laundering rules since US PATRIOT Act



Corporate Transparency Act (CTA) (Cont.)

- Was a long time coming and represented the culmination of a lot of international pressure including pressure from FATF (U.S. graded as non-compliant)
- Lack of BOI disclosure major vulnerability in US AML regime
- Enforced by U.S. Department of Treasury's Financial Crimes Enforcement Network ("FinCEN")

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Purpose of CTA

CONGRESS SOUGHT TO PREVENT:

- Money laundering
- Financing of terrorism
- Other illicit activity

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Purpose of CTA (Cont.)

GOAL OF REGISTRY PER FINCEN:

- “to assist law enforcement in unmasking shell companies used to hide illicit activities”
- “add valuable context to financial analysis in support of law enforcement and tax investigations”
- FinCEN example: Russians using shell companies to evade Ukraine invasion sanctions.

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Privacy No More

- Generally smaller, more lightly regulated entities that may not be subject to any other beneficial ownership information (BOI) reporting requirements.
- Domestic and foreign businesses registered to do business in the U.S.
- LLCs, LPs, corporations.

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Privacy No More (Cont.)

- Obligated to disclose previously private information
 - Ownership
 - Control
 - Including senior officers and other controlling persons.
- Exempts certain more heavily regulated entities to avoid imposing duplicative requirements.

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Regulations Issued on 30 September

- Requires "Reporting Companies" to disclose specific information regarding their "Beneficial Owners" and "Company Applicants" to FinCEN
- Final Regulations also require specific information on the Reporting Company itself to be reported to FinCEN.

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Regulations Issued on 30 September (Cont.)

- Final Regulations mention an upcoming revamp to the existing “Consumer Due Diligence” rules for banking institutions with respect to BOI information of customers so as to bring the CDD rules into conformity with the AML Act as a whole, including the CTA, which will be done through future rule making by FinCEN.



Regulations Issued on 30 September (Cont.)

- Effective 1 January 2024
- FinCEN has decided to collect various identifying details, including identifying numbers. The final regs require the reporting of the TIN in virtually every case. Only foreign companies without a TIN are spared and have to provide a foreign tax ID number and issuing jurisdiction instead
- Initial reports are required within 30 days of creation, for companies created on or after the effective date. Pre-existing companies have until 1 January 2025



Beneficial Ownership Secure System (BOSS)

- Beneficial ownership database
- Currently being built by FinCEN
- Should be useful to financial institutions but reporting company has to consent (although one would think this will be functionally mandatory to get an account)
- Access regulations are still being written

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Who Must File A Report?

- Domestic Reporting Company - A corporation, LLC, or "other similar entity" created by the filing of a document pursuant to the laws of a US state or Indian Tribe.
 - Intended to apply to LP, LLP, LLLP and business statutory trusts.
 - FinCEN has interpreted "other similar entity" to apply to any other entity that is "created by the filing of a document with the secretary of state or any similar office under the law of a State or Indian Tribe".
 - Therefore, common law trusts are not included as a Reporting Company, but some trusts are captured under the "Beneficial Owner" definition in Final Regulations.

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Who Must File A Report? (Cont.)

- Foreign Reporting Company - A corporation, LLC, or "other similar entity" that is:
- Formed under the law of a foreign country, and
- Registered to do business in any State or tribal jurisdiction by the filing of a document with the secretary of state or any similar office under the law of a State or Indian Tribe.



Who Is A Company Applicant?

- The person who files the document that forms the domestic reporting company.
- The person who files the document that first registers the foreign entity to do business in the U.S.
- Individual who is “primarily responsible” for directing or controlling such filing if more than one individual is involved in the filing of the document.



Who Is A BO?

“Any individual who, directly or indirectly, through any contract, arrangement, understanding, relationship, or otherwise

- Exercises substantial control over the entity; OR
- Owns at least 25% of the entity; OR
- Controls at least 25 percent of the ownership interests of the entity.

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Who Is A BO? (Cont.)

SUBSTANTIAL CONTROL INCLUDES

- Service as a senior officer;
- Authority over the appointment or removal of any senior officer or a majority of the board of directors

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Who Is A BO? (Cont.)

SUBSTANTIAL CONTROL INCLUDES

- Direction, determination, substantial influence over, important decisions of a reporting company
 - Nature, scope, and attributes of the business of the reporting company, including the sale, lease, mortgage, or other transfer of any principal assets of the reporting company;
 - Reorganization, dissolution, or merger of the reporting company;
 - Major expenditures or investments, issuance of any equity, incurrence of any significant debt, or approval of the operating budget of the reporting company;

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Who Is A BO? (Cont.)

SUBSTANTIAL CONTROL INCLUDES

- Direction, determination, substantial influence over, important decisions of a reporting company
 - Selection or termination of business lines or ventures, or geographic focus, of the reporting company;
 - Compensation schemes and incentive programs for senior officers;
 - Entry into or termination, or the fulfillment or non-fulfillment of significant contracts;
 - Amendments of any substantial governance documents of the reporting company; and

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Who Is A BO? (Cont.)

SUBSTANTIAL CONTROL INCLUDES

- Any other form of substantial control over the reporting company whether direct or indirect.



Excluded from BO

- Minor children (reporting company must provide information of a parent or legal guardian individual acting as nominee).
- Nominees, intermediaries, custodians, or agents
- Employees acting solely as employees and not as senior officers.
- Individuals whose only interest in a reporting company is a future interest through the right of inheritance.
- Creditors of a reporting company (but not if there is an equity kicker).



23 Exemptions Including

- Banks and bank-type entities.
- Tax-exempt entities - IRC §501(c) organizations that are tax exempt under IRC §501(a) (regardless of whether they have applied for exempt status on IRS Form 1023, 1024, or 1024A), political organizations under IRC §527, and trusts under IRC §4947(a)(1) or (2) (note: common law trusts are not excluded as exempt; rather, they fall outside the definition of Reporting Company).

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23 Exemptions Including (Cont)

- Accounting firms registered under §102 of the Sarbanes-Oxley Act of 2002.
- Publicly traded companies.
- Large Operating Company – Company employing more than 20 employees in the U.S., with gross receipts or sales over \$5M and physical present in the U.S.

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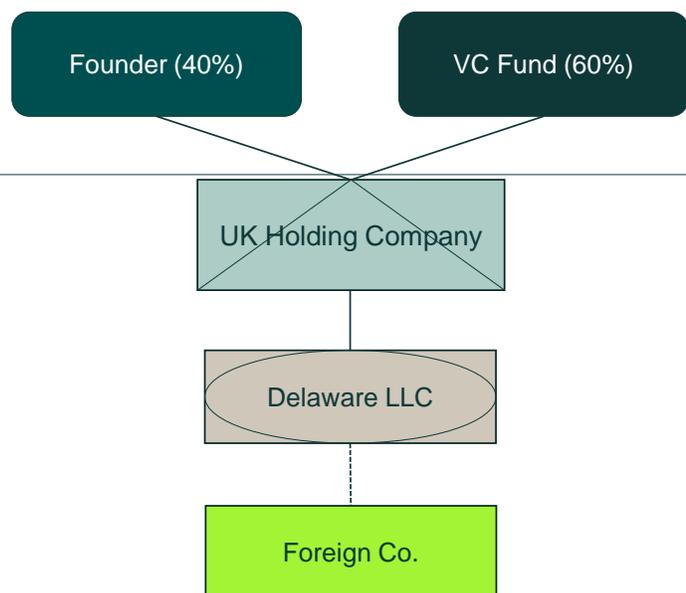
23 Exemptions Including (Cont)

- Subsidiaries of an exempt entity – If the parent entity that owns or controls the subject entity is exempt, the subject entity does not have to report BOI of the parent entity. Note, however, that if the exempt entity, such as a 501(c)(3) entity, is a minority owner of the subsidiary, the subsidiary will be a Reporting Company and will need to report the 501(c)(3) entity as a Beneficial Owner if it meets the BO requirements.
- Certain inactive entities in existence before January 1, 2020.

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Example



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Reporting Requirements: BO & Company Applicant

BENEFICIAL OWNERS AND APPLICANTS (REQUIRED BY CTA AND FINAL REGULATIONS):

- Legal Name
- Date of birth
- Residential address for Beneficial Owners
- Business address for professional Applicants

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Reporting Requirements: BO & Company Applicant (Cont.)

BENEFICIAL OWNERS AND APPLICANTS (REQUIRED BY CTA AND FINAL REGULATIONS):

- Residential address for other Applicants
- Unique identifying number from an acceptable identification document (e.g., unexpired passport number) or FinCEN identifier
- Image of document with ID number

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Reporting Deadlines

EXISTING ENTITIES

- CTA allows up to 2 years.
- FinCEN Proposed Rules state within 1 year of final regulations.

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Reporting Deadlines (Cont.)

NEW ENTITIES

- Formed after the effective date of FinCEN's final regulations.
- Due 30 days after the date of initial filing with the Secretary of State (or similar authority)
 - Foreign Reporting Company: within 30 calendar days of the date it first became a foreign reporting company.
 - Domestic Reporting Company: within 30 calendar days of the date the company was formed as specified by a secretary of state or similar office.
- Potential issue: IRS procedure for a) Domestic entities; with b) Foreign "Responsible person". EIN turn around time. No phone/no online.

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Reporting Deadline: Previously Exempt

Previously exempt company that no longer meets any exemption criteria must report within 30 calendar days after the date on which the entity no longer meets any exemption criteria.



Reporting Requirements: Corrections & Updates

- Corrections to a previously submitted report containing inaccurate information must be filed within 30 calendar days after the date on which the company becomes aware or has reason to know that any required information contained in any report was inaccurate.
- Updates to previously filed correct information must be filed within 30 calendar days after the date on which there is any change.



Failure to Report

CIVIL PENALTIES

Maximum civil penalty of \$500 each day the violation continues (up to \$10,000).

CRIMINAL PENALTIES

Imprisonment for up to two years.

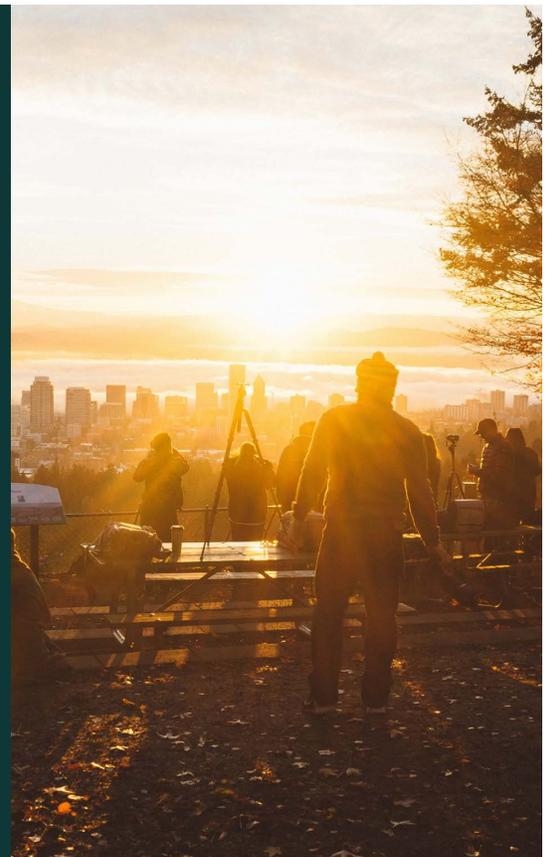
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What about?

- Trusts
- Partnerships

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What about? (Cont.)

- Exempt entities. (i) Reporting company owned by exempt entity. If one or more exempt entities under paragraph (c)(2) of this section has or will have a direct or indirect ownership interest in a reporting company and an individual is a beneficial owner of the reporting company exclusively by virtue of the individual's ownership interest in such exempt entities, the report may include the names of the exempt entities in lieu of the information required under paragraph (b)(1) of this section with respect to such beneficial owner.

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Who Can See The Data?

NON-PUBLIC DATA BASE. FINCEN CAN DISCLOSE THE INFORMATION:

- Federal agencies: when acting in furtherance of national security, intelligence, or law enforcement activity.
- State, local, and Tribal law enforcement agencies: after receiving authorization from a court of competent jurisdiction as part of a criminal or civil investigation.
- Foreign government: foreign law enforcement agencies, prosecutors, and judges in specified circumstances through a request to a federal agency.

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Who Can See The Data? (Cont.)

- Financial institutions: to facilitate compliance with customer due diligence requirements under applicable law, with the consent of the reporting company.
- Financial institution's regulator: BOI that has been provided to a regulated financial institution for the purpose of performing regulatory oversight that is specific to that financial institution.



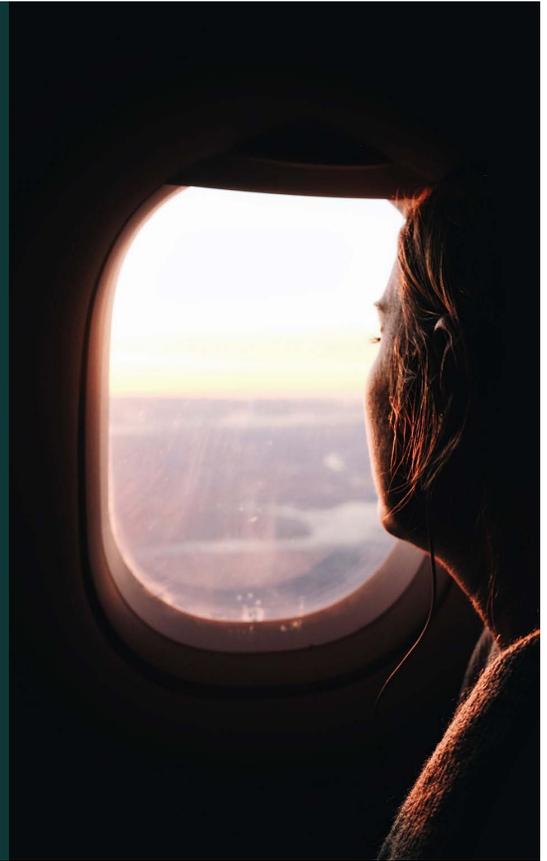
Unauthorized Practice of Law

- This is not a tax form. Title 31 not Title 26 (tax code).
- Although FBAR has been accepted as a quasi-tax form, unclear if the same will be true for filling out CTA documentation
- Arguably, this is more of a legal determination than FBAR (which is largely reporting amounts although there are plenty of legal determinations built into FBAR)
- FinCEN did not consider/ignored in Final Rules



Next Steps

- Will implementation be delayed (remember the public company signature authority debacle?)
- When will the access regulations and database be done?
- CDD changes for banks coming up too
- ENABLERS Act?



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