

CORPORATE TRANSPARENCY ACT GUIDE

REPORTING COMPANIES

Is an Entity a Reporting Company?

Any **domestic reporting company** or **foreign reporting company** that does not qualify for one of 23 exemptions is a **reporting company** and must make an initial filing with FinCEN and update that filing if any information changes or is inaccurate. (See pages 3-5 for exemptions)

Domestic reporting company: Any entity that is (i) a corporation; (ii) a limited liability company; or (iii) created by the filing of a document with a secretary of state or any similar office under the law of a State or Indian tribe (e.g., limited partnership, professional corporation, limited liability partnership, etc.)

Foreign reporting company: Any entity that is (i) a corporation, limited liability company, or other entity; (ii) formed under the law of a foreign country; and (iii) registered to do business in any state or tribal jurisdiction by the filing of a document with a secretary of state or any similar office under the law of a State or Indian tribe

Entity Continuously Qualifies for Exemption

No reports or updates required

Entity Fails To Qualify for Exemption

Entity is a **reporting company**

Initial Report by Reporting Company

- Filed directly with [FinCEN through BOI website](#)
- If entity formed (domestic) or registered (foreign) prior to January 1, 2024, entity must file initial report by January 1, 2025.
- If entity formed (domestic) or registered (foreign) on or after January 1, 2024, and before January 1, 2025, entity must file initial report within 90 days of confirmation of formation/registration.
- If entity formed (domestic) or registered (foreign) on or after January 1, 2025, entity must file initial report within 30 days of confirmation of formation/registration.

Reporting Company Information

1. Full legal name
2. DBAs and trade names
3. Complete current address
4. State, Tribe or foreign jurisdiction of formation
5. For foreign reporting company, the State or Tribal jurisdiction where reporting company first registers
6. IRS Taxpayer Identification Number (including EIN)

Beneficial Owner Information

1. Full legal name
 2. Date of birth
 3. Complete residential address
 4. Unique identifying number from a non-expired passport, state ID or driver's license
 5. Image of document showing unique identifying number
- (See pages 6-9 for determination of beneficial owners)

Company Applicant Information

Only applies to entities formed or registered on or after January 1, 2024

1. Full legal name
2. Date of birth
3. Complete current address (can be business address if in business of forming entities)
4. Unique identifying number from a non-expired passport, state ID or driver's license
5. Image of document showing unique identifying number

(See page 10 for determination of company applicants)

Use of FinCEN Identifiers

Unique FinCEN identifiers, if obtained by the applicable individuals, may be provided in lieu of the information requested for beneficial owners and company applicants.

Updates and Corrections

If any reporting company information or beneficial ownership information changes or the reporting company becomes aware of an inaccuracy in the reported information, the reporting company must update its report with FinCEN within 30 days of the change or discovery of the inaccuracy.

Subsequent Availability of Exemption

If a reporting company becomes exempt after it files its initial report, the reporting company must update its report with FinCEN within 30 days of becoming exempt.

Effect of FinCEN Identifiers

If an individual obtains and provides a FinCEN identifier to the reporting company, the burden of updating the individual's identifying information shifts to the individual who obtained the FinCEN identifier. For this reason, reporting companies may prefer that their beneficial owners obtain a FinCEN identifier.

Responsibility for Compliance

The responsibility for making filings under the CTA falls upon the individuals who control the reporting company and its senior officers. If a person who controls a reporting company or serves as a senior officer willfully causes a reporting company to fail to meet its reporting obligations under the CTA, that person may face civil or criminal violations. Beneficial owners are similarly prohibited from providing false information to the reporting company.

Each report and update must be certified by the person filing the report that the information is true, accurate and complete.

Personally Identifiable Information

Care should be taken when collecting, storing and transmitting the personally identifiable information that is required to be disclosed.

Quick References

- Exemptions – Pages 3-5
- Beneficial Owners – Pages 6-9
- Company Applicants – Page 10
- Certain Definitions – Page 11
- Full Text of Exemptions – Pages 12-14
- Qualifications – Page 15

The following entities are unlikely to qualify for an exemption (non-exhaustive):

- Holding companies (unless registered or reporting under the Exchange Act)
- Operating companies that do not qualify for the large operating company exemption
- Joint ventures and non-wholly owned subsidiaries that do not independently meet an exemption
- Exempt private fund advisers (other than venture capital advisers) and their pooled investment vehicles
- Real estate investment vehicles
- Special purpose vehicles

Exemptions

Entities that qualify for any of the following 23 exemptions are not reporting companies and have no filing obligations at this time.* **(See pages 12-14 for full text of exemptions, including certain qualifications)*

Large Operating Company

- (i) employs more than 20 full time employees in the United States,
- (ii) has an operating presence at a physical office in the United States; **and**
- (iii) filed a Federal income tax or information return in the United States for the previous year demonstrating more than \$5,000,000 in gross receipts or sales

Securities Reporting Issuer

- (i) an issuer of a class of securities registered under section 12 of the Exchange Act, **or**
- (ii) required to file supplementary and periodic information under section 15(d) of the Exchange Act

Subsidiary of Exempt Entities

Any entity whose ownership interests are controlled or wholly owned, directly or indirectly, by one or more exempt entities (other than a money services business, pooled investment vehicle or entity assisting a tax-exempt entity)

Tax-Exempt Entity

- (i) an organization described in 501(c) of the Code and exempt from tax under section 501(a) of the Code;
- (ii) a political organization, as defined in section 527(e)(1) of the Code, that is exempt from tax under section 527(a) of the Code; **or**
- (iii) a trust described in paragraph (1) or (2) of section 4947(a) of the Code

Entity Assisting a Tax-Exempt Entity

- (i) operates exclusively to provide financial assistance to, or hold governance rights over, any exempt Tax-Exempt Entity;
- (ii) is a United States person;
- (iii) is beneficially owned or controlled exclusively by one or more United States persons that are United States citizens or lawfully admitted for permanent residence; **and**
- (iv) derives at least a majority of its funding or revenue from one or more United States persons that are United States citizens or lawfully admitted for permanent residence

Accounting Firm

Any public accounting firm registered in accordance with section 102 of the Sarbanes-Oxley Act

Exemptions (Continued)

Investment Company or Investment Adviser Registered with the SEC

- (i) an investment company as defined in section 3 of the Investment Company Act or an investment adviser as defined in section 202 of the Investment Advisers Act; and
- (ii) registered with the SEC under the Investment Company Act or the Investment Advisers Act

Venture Capital Fund Adviser

Any investment adviser that:

- (i) is described in section 203(l) of the Investment Advisers Act; and
- (ii) has filed Form ADV (as exempt reporting adviser) with the SEC

Certain Pooled Investment Vehicles

Any pooled investment vehicle that is operated or advised by a bank, credit union, registered broker or dealer in securities, investment company or investment adviser registered with the SEC or an exempt reporting venture capital adviser

Registered Broker or Dealer in Securities

Any broker or dealer that is registered under section 15 of the Exchange Act

Commodity Exchange Act Registered Entity

- (i) a registered entity as defined in section 1a of the Commodity Exchange Act; or
- (ii) a futures commission merchant, introducing broker, swap dealer, major swap participant, commodity pool operator, or commodity trading advisor, or retail foreign exchange dealer registered with the CFTC under the Commodity Exchange Act

Securities Exchange or Clearing Agency

Any exchange or clearing agency that is registered under sections 6 or 17A of the Exchange Act

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

Other Exchange Act Registered Entity

Any other entity that is registered with the SEC under the Exchange Act

Public Utility

Any entity that is a regulated public utility that provides telecommunications services, electrical power, natural gas, or water and sewer services within the United States

Exemptions (Continued)**Bank**

Any bank, as defined in:

- (i) Section 3 of the Federal Deposit Insurance Act;
- (ii) Section 2(a) of the Investment Company Act; or
- (iii) Section 202(a) of the Investment Advisers Act

Credit Union

Any Federal credit union or State credit union

Depository Institution Holding Company

Any bank holding company or any savings and loan holding company

Money Services Business

Any money transmitting business or money services business registered with FinCEN

Insurance Company

Any insurance company as defined in section 2 of the Investment Company Act

State-Licensed Insurance Producer

Any entity that:

- (i) 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
- (ii) has an operating presence at a physical office within the United States

Governmental Authority

- (i) 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
- (ii) exercises governmental authority on behalf of the United States or any such Indian tribe, State, or political subdivision

Inactive Entity

- (i) was in existence on or before January 1, 2020;
- (ii) is not engaged in an active business;
- (iii) is not owned by a foreign person, whether directly or indirectly, wholly or partially;
- (iv) has not experienced any change in ownership in the preceding twelve-month period;
- (v) 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 twelve-month period; and
- (vi) does not otherwise hold any kind or type of assets

CORPORATE TRANSPARENCY ACT GUIDE

BENEFICIAL OWNERS

Who Are the Beneficial Owners of the Reporting Company?

Any **individual** who, directly or indirectly, either owns or controls at least 25% of the reporting company's ownership interests or exercises substantial control over a reporting company is a **beneficial owner** and must be disclosed in the reporting company's reports.

**Individual Directly or Indirectly Owns or Controls
25% of Ownership Interests (See pages 7-8)**

**Individual Directly or Indirectly Exercises
Substantial Control (See page 9)**



Reporting Company Must Report Individual as Beneficial Owner and Update Reports for any Changes in Beneficial Owners or Information Related to Beneficial Owners

If a reporting company has any change in beneficial owners, or if any information regarding a current beneficial owner changes (e.g., change of beneficial owner's reported address), the reporting company must update its report with FinCEN within 30 days of the change.

Effect of FinCEN Identifiers

If an individual obtains and provides a FinCEN identifier to the reporting company, the burden of updating the individual's identifying information shifts to the individual who obtained the FinCEN identifier. For this reason, reporting companies may prefer that their beneficial owners obtain a FinCEN identifier.

Likely Beneficial Owners

- Individual who beneficially owns 25% of a reporting company
- President, chief financial officer, general counsel, chief executive officer, chief operating officer, or any other officer performing similar function
- Managers of LLCs
- Any individual who has substantial control over a reporting company

Exceptions From "Beneficial Owner"

- Minor child (report parent or guardian and update when minor reaches age of majority)
- Nominee, intermediary, custodian or agent on behalf of another individual
- Employee of reporting company (other than senior officer) whose substantial control over or economic benefits from the reporting entity are derived solely from employment
- Individual whose only interest in a reporting company is a future interest through a right of inheritance
- Creditor of a reporting company (if only entitled to predetermined payment)

Determination of Individuals Who Directly or Indirectly Own or Control 25% of Ownership Interests

Ownership Interests Defined

1. Any equity, stock, or similar instrument; preorganization certificate or subscription; or transferable share of, or voting trust certificate or certificate of deposit for, an equity security, interest in a joint venture, or certificate of interest in a business trust; in each case, without regard to whether any such instrument is transferable, is classified as stock or anything similar, or confers voting power or voting rights;
2. Any capital or profit interest in an entity;
3. Any instrument convertible, with or without consideration, into any share or instrument described in items 1 or 2, any future on such instrument, or any warrant or right to purchase, sell, or subscribe to a share or interest described in item 1 or 2, regardless of whether characterized as debt;
4. Any put, call, straddle, or other option or privilege of buying or selling any item described in items 1, 2, or 3 without being bound to do so, except to the extent that such option or privilege is created and held by a third party or third parties without the knowledge or involvement of the reporting company; or
5. Any other instrument, contract, arrangement, understanding, relationship, or mechanism used to establish ownership.

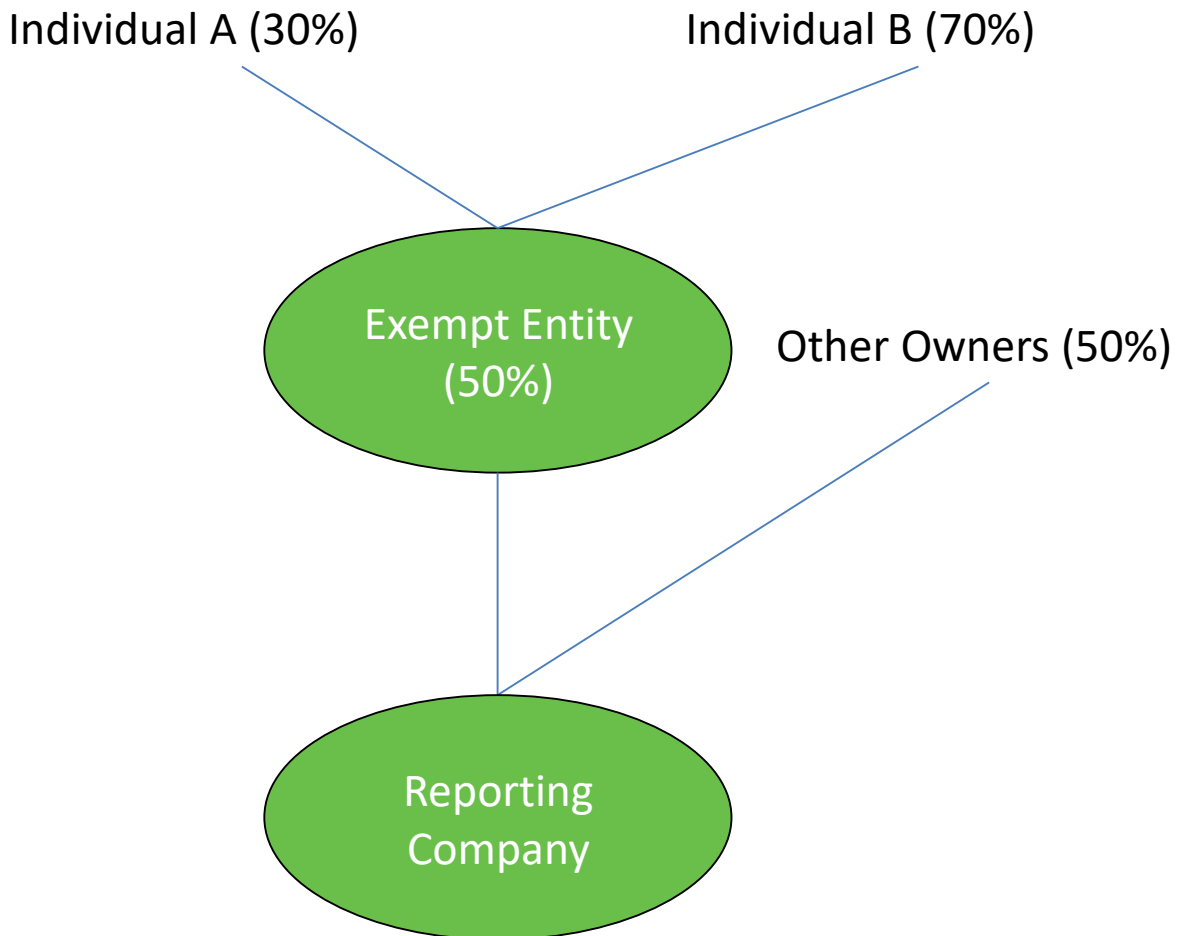
Calculation of Total Ownership Interest

1. Ownership interests of the individual are calculated at the present time, and any options or similar interests of the individual are treated as exercised.
2. For reporting companies that issue capital or profits interests (including entities treated as partnerships for federal income tax purposes), the individual's ownership interests are the individual's capital and profit interest in the entity, calculated as a percentage of the total outstanding capital and profit interests of the entity.
3. For corporations, entities treated as corporations for federal income tax purposes, and other reporting companies that issue shares of stock, the applicable percentage is the greater of (i) the total combined voting power of all classes of ownership interests of the individual as a percentage of total outstanding voting power of all classes of ownership interests entitled to vote; or (ii) the total combined value of the ownership interest of the individual as a percentage of the total outstanding value of all classes of ownership.
4. If the facts and circumstances do not permit the calculations described in items 2 or 3 to be performed with reasonable certainty, any individual who owns or controls at least 25% of any class or type of ownership interest of a reporting company is deemed to own or control at least 25% of the ownership interests of the reporting company.

25% Ownership Special Rule

If an individual is a beneficial owner of a reporting company solely by reason of the individual's indirect 25% ownership through one or more exempt entities, the reporting company may include the name of the exempt entity in lieu of the information of the beneficial owner.

In the following example, assuming neither Individual A nor Individual B exercises substantial control of the reporting company, Individual B would be a "beneficial owner" of Reporting Company with a 35% beneficial ownership interest (Individual A only has a 15% percent beneficial ownership interest and therefore does not meet the threshold). However, in lieu of reporting Individual B as a beneficial owner, Reporting Company may list the name of the Exempt Entity.



Determination of Individuals Who Directly or Indirectly Exercise Substantial Control

Directly or Indirectly Exercises Substantial Control

1. Serves as senior officer (president, chief financial officer, general counsel, chief executive officer, chief operating officer, or any other officer performing similar function)
2. Has authority over appointment or removal of any senior officer or a majority of the board of directors (or similar body)
3. Directs, determines, or has substantial influence over important decisions
4. Has any other substantial control over the reporting company

Examples of Direct or Indirect Exercise of Substantial Control

An individual may directly or indirectly, including as a trustee of a trust or similar arrangement, exercise substantial control through:

1. Board representation
2. Ownership or control of a majority of the voting power or voting rights
3. Rights associated with any financing arrangement or interest in a company
4. Control over one or more intermediary entities that separately or collectively exercise substantial control
5. Arrangements or financial or business relationships, whether formal or informal, with other individuals or entities acting as nominees
6. Any other contract, arrangement, understanding, relationship, or otherwise

Who Are the Company Applicants of the Reporting Company?

The **individual** who directly files the document that creates or registers the reporting company is a **company applicant** and must be reported on the reporting company's initial filing only. If more than one individual is involved in filing the reporting company's charter document, the individual who is primarily responsible for directing or controlling the filing is also a company applicant. Company applicant information does not need to be updated on subsequent filings. Entities formed prior to January 1, 2024, do not need to report company applicant information.

Likely Company Applicants

- Individual at business formation services responsible for direct filing
- Attorneys at law firm if the filing is directed by the law firm
- Authorized person on behalf of reporting company if no business formation service or law firm used

CFTC: Commodity Futures Trading Commission

Code: Internal Revenue Code of 1986, as amended

Domestic reporting company: Any entity that is (i) a corporation; (ii) a limited liability company; or (iii) created by the filing of a document with a secretary of state or any similar office under the law of a State or Indian tribe (e.g., limited partnership, professional corporation, limited liability partnership, etc.)

Exchange Act: Securities Exchange Act of 1934, as amended

FinCEN: Financing Crimes Enforcement Network, a bureau of the U.S. Department of the Treasury

Foreign reporting company: Any entity that is (i) a corporation, limited liability company, or other entity; (ii) formed under the law of a foreign country; and (iii) registered to do business in any state or tribal jurisdiction by the filing of a document with a secretary of state or any similar office under the law of a State or Indian tribe

Investment Advisers Act: Investment Advisers Act of 1940, as amended

Investment Company Act: Investment Company Act of 1940, as amended

SEC: U.S. Securities and Exchange Commission

Large Operating Company. Any entity that (i) 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 has the meaning provided in section 1010.100(hhh); (ii) has an operating presence at a physical office in the United States; and (iii) filed a Federal income tax or information return in the United States for the previous year demonstrating more than \$5,000,000 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, 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 U.S.C. 1504 that filed a consolidated return, the applicable amount shall be the amount reported on the consolidated return for such group.

Securities Reporting Issuer. Any issuer of securities that is (i) an issuer of a class of securities registered under section 12 of the Securities Exchange Act of 1934 (15 U.S.C. 78l) or (ii) required to file supplementary and periodic information under section 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78o(d)).

Subsidiary of Certain Exempt Entities. Any entity whose ownership interests are controlled or wholly owned, directly or indirectly, by one or more [of the following exempt entities: securities reporting issuer, governmental authority, bank, credit union, depository institution holding company, broker or dealer in securities, securities exchange or clearing agency, other Exchange Act registered entity, investment company or investment adviser, venture capital fund adviser, insurance company, state-licensed insurance producer, Commodity Exchange Act registered entity, accounting firm, public utility, financial market utility, tax-exempt entity or large operating company].

Tax-Exempt Entity. Any entity that is (i) an organization described in 501(c) of the Internal Revenue Code (Code) (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 exempt for the 180-day period beginning on the date of the loss of such tax-exempt status; (ii) a political organization, as defined in section 527(e)(1) of the Code, that is exempt from tax under section 527(a) of the Code; or (iii) a trust described in paragraph (1) or (2) of section 4947(a) of the Code.

Entity Assisting a Tax-Exempt Entity. Any entity that (i) operates exclusively to provide financial assistance to, or hold governance rights over, any [tax-exempt entity]; (ii) is a United States person; (iii) is beneficially owned or controlled exclusively by one or more United States persons that are United States citizens or lawfully admitted for permanent residence; and (iv) derives at least a majority of its funding or revenue from one or more United States persons that are United States citizens or lawfully admitted for permanent residence.

Accounting Firm. Any public accounting firm registered in accordance with section 102 of the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7212)

CORPORATE TRANSPARENCY ACT GUIDE

FULL TEXT OF EXEMPTIONS

Investment Company or Investment Adviser. Any entity that is (i) an investment company as defined in section 3 of the Investment Company Act of 1940 (15 U.S.C. 80a-3) or an investment adviser as defined in section 202 of the Investment Advisers Act of 1940 (15 U.S.C. 80b-2); and (ii) registered with the Securities and Exchange Commission under the Investment Company Act of 1940 (15 U.S.C. 80a-1 *et seq.*) or the Investment Advisers Act of 1940 (15 U.S.C. 80b-1 *et seq.*).

Venture Capital Fund Adviser. Any investment adviser that (i) is described in section 203(l) of the Investment Advisers Act of 1940 (15 U.S.C. 80b-3(l)); and (ii) has filed Item 10, Schedule A, and Schedule B of Part 1A of Form ADV, or any successor thereto, with the Securities and Exchange Commission.

Pooled Investment Vehicle. Any pooled investment vehicle that is operated or advised by [one of the following exempt entities: a bank, credit union, registered broker or dealer in securities, investment company or investment adviser registered with the SEC or an exempt reporting venture capital adviser].

Broker or Dealer in Securities. Any broker or dealer, as those terms are defined in section 3 of the Securities Exchange Act of 1934 (15 U.S.C. 78c), that is registered under section 15 of that Act (15 U.S.C. 78o).

Commodity Exchange Act Registered Entity. Any entity that is (i) a registered entity as defined in section 1a of the Commodity Exchange Act (7 U.S.C. 1a); or (ii) (A) 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 (7 U.S.C. 1a), or a retail foreign exchange dealer as described in section 2(c)(2)(B) of the Commodity Exchange Act (7 U.S.C. 2(c)(2)(B)) and (B) registered with the Commodity Futures Trading Commission under the Commodity Exchange Act.

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 (15 U.S.C. 78c), that is registered under sections 6 or 17A of that Act (15 U.S.C. 78f, 78q-1).

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 (12 U.S.C. 5463).

Other Exchange Act Registered Entity ties. Any other entity that is registered with the Securities and Exchange Commission under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*).

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

CORPORATE TRANSPARENCY ACT GUIDE

FULL TEXT OF EXEMPTIONS

Bank. Any bank, as defined in (i) Section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813); (ii) Section 2(a) of the Investment Company Act of 1940 (15 U.S.C. 80a-2(a)); or (iii) Section 202(a) of the Investment Advisers Act of 1940 (15 U.S.C. 80b-2(a)).

Credit Union. Any Federal credit union or State credit union, as those terms are defined in section 101 of the Federal Credit Union Act (12 U.S.C. 1752).

Depository Institution Holding Company. Any bank holding company as defined in section 2 of the Bank Holding Company Act of 1956 (12 U.S.C. 1841), or any savings and loan holding company as defined in section 10(a) of the Home Owners' Loan Act (12 U.S.C. 1467a(a)).

Money Services 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.

Insurance Company. Any insurance company as defined in section 2 of the Investment Company Act of 1940 (15 U.S.C. 80a-2).

State-Licensed Insurance Producer. Any entity that (i) 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 (ii) has an operating presence at a physical office within the United States.

Governmental Authority. Any entity that (i) 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 (ii) exercises governmental authority on behalf of the United States or any such Indian tribe, State, or political subdivision.

Inactive Entity. Any entity that: (i) was in existence on or before January 1, 2020; (ii) is not engaged in an active business; (iii) is not owned by a foreign person, whether directly or indirectly, wholly or partially; (iv) has not experienced any change in ownership in the preceding twelve-month period; (v) 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 twelve-month period; and (vi) 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.

This Corporate Transparency Act Guide is intended to help you determine whether an entity in your organization is a reporting company and subject to the disclosure requirements of the Corporate Transparency Act (CTA), and the information it will need to provide to FinCEN if it is covered by the CTA; however, this guide is not comprehensive, and it is not intended to be, and should not be interpreted as, individual legal advice. This guide is current as of the date indicated herein and may not reflect subsequent updates and guidance from FinCEN or other authorities. An individual's or entity's reporting obligations under the CTA will depend on the facts specific to that individual or entity. Every principal, manager and senior officer of any business that has any entity organized or registered to do business in the United States and its territories should become familiar with the requirements of the CTA and create an operational system to ensure timely compliance. If you would like help establishing that system or have any questions on how the CTA will apply to you and your business, please reach out to your Farella lawyer and we will be happy to assist you. Please direct any questions relating to this guide to Greg LeSaint (glesaint@fbm.com).