



EXECUTIVE COMPLIANCE: THE CORPORATE TRANSPARENCY ACT FOR ENERGY COMPANIES

The Corporate Transparency Act (“**CTA**”), which became effective January 1, 2024, requires any entity that is either formed or registered to do business in the US to report certain beneficial ownership information to the Financial Crimes Enforcement Network (“**FinCEN**”), unless the entity qualifies for an exemption. Energy companies, like other business entities, are subject to the CTA’s requirements. Provided below is an executive summary of the CTA and its implications for energy companies.

WHAT IS THE CTA?

- The CTA is a U.S. law enacted to enhance transparency in corporate ownership and combat illicit activities such as money laundering.

WHO MUST REPORT?

- Any legal entity formed in or registered to do business in the U.S., unless exempted.

WHO IS EXEMPT FROM REPORTING?

The CTA includes 23 exemptions, with the ones below being particularly relevant to energy companies.

- Large Operating Companies: Companies with more than 20 full-time U.S. employees, over \$5 million in U.S. source gross receipts or sales, and a physical operating presence in the U.S.
- Regulated Entities: Financial institutions, such as regulated public utilities,¹ banks, credit unions, and investment companies already subject to U.S. federal regulation and reporting requirements.
- Publicly Traded Companies: Companies registered under Section 12 of the Securities Exchange Act of 1934 or required to file reports under Section 15(d).
- Inactive Entities: Companies that were in existence on or before January 1, 2020, have no assets, no foreign ownership, no business activity, and have had no change in ownership in the previous 12 months.
- Governmental Authorities: Federal, state, and local governmental entities, as well as entities created by such governmental bodies.
- Certain Tax-Exempt Entities: Charitable organizations, churches, and other entities exempt from taxation under sections 501(c), 527, or 4947(a)(1) of the Internal Revenue Code.
- Subsidiaries of Exempt Entities: Any entity wholly owned or controlled by certain entities already exempt from reporting.

¹ As relevant here, “regulated public utility” means a corporation engaged in the furnishing or sale of electric energy or gas if the rates for such furnishing or sale have been established or approved by: (i) a State or political subdivision thereof; (ii) a U.S. agency or instrumentality; (iii) a public service or utility commission (or other similar body) of D.C. or of any State or political subdivision thereof; or (iv) a foreign country or an agency or instrumentality or political subdivision thereof.

WHAT DO ENTITIES HAVE TO REPORT?

- Each legal entity subject to the CTA must submit a Beneficial Ownership Information Report (“BOIR”) to FinCEN.
- The BOIR must include the company’s legal name, business address, jurisdiction of formation, and taxpayer ID, along with details of its beneficial owners (full name, date of birth, residential address, and identification number) and in some cases information on the individuals who filed or directed the filing of information to create the legal entity.

WHO ARE THE “BENEFICIAL OWNERS” OF A COMPANY?

- Individuals who own at least 25% of the total ownership interests in the entity.
- Individuals who exercise “substantial control” over a reporting company:
 - Senior officers (e.g., President, CEO, CFO, COO, GC, or any other officer that performs a similar function) or those with decision-making authority.
 - Individuals that have authority over the appointment or removal of any senior officer or a majority of the board of directors (or similar body).
 - Individuals that direct, determine, or have substantial influence over important decisions made by the reporting company, which could in certain circumstances include directors.

WHAT IS THE DEADLINE FOR REPORTING?

- Entities that existed before January 1, 2024 must file by January 1, 2025.
- New entities formed in 2024 must file within 90 days of notice of formation; from 2025 onwards, the deadline will be 30 days.
- Entities must update their BOIR within 30 days of any changes in beneficial ownership or information on beneficial owners.

ARE THERE PENALTIES FOR FAILING TO COMPLY?

- Noncompliance can result in civil penalties of \$500 per day and potential criminal penalties, including imprisonment for individuals involved in willful breaches.

WHAT SPECIFIC CONSIDERATIONS SHOULD ENERGY COMPANIES KEEP IN MIND?

- Complex Corporate Structures: The multiple layers of affiliates often used by energy companies may make it difficult to accurately track and report beneficial ownership information for each entity.
- Investment and Joint Venture (“JV”) Complications: Energy companies backed by private equity or structured as a JV may need to navigate intricate ownership chains and decision-making structures to determine which individuals must be reported as beneficial owners.
- Broad Definition of Substantial Control: Depending on the scope of authority granted by governing documents, “substantial control” could be exercised by an individual serving as: trustee of a statutory trust; general partner of a limited partnership; manager of a limited liability company; and director of a corporation where, for example, such director holds significant veto power.
- Reach to Non-U.S. Entities: If a U.S. legal entity has a CTA reporting obligation, it must report any natural persons who own or control at least 25% of their ownership interests, directly or indirectly, even if that person is a foreign entity that would not otherwise be subject to the CTA. This can be particularly relevant for JVs or holding companies that have upstream foreign investors.
- Ongoing Compliance: Changes in ownership or control due to changes in senior officers, M&A activity, or internal corporate restructurings may trigger the need to update BOIRs.

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