

The Corporate Transparency Act – Must a Nonprofit Organization Comply?

Description

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Beginning on January 1, 2024, the vast majority of new and existing business entities will become subject to beneficial ownership information reporting requirements under the Corporate Transparency Act and its related rules and regulations (collectively, the “CTA”). The CTA requires certain “Reporting Companies” to submit beneficial ownership information reports to the U.S. Treasury Department’s Financial Crimes Enforcement Network (“FinCEN”). Although nonprofit entities are not categorically exempt from the CTA’s filing requirements, there are several exemptions that may apply to nonprofit entities. This article focuses on the CTA’s application specifically to nonprofit entities; for general information regarding the CTA, see our other writing on this topic [here](#).

Any nonprofit entity formed as a corporation or limited liability company is a “Reporting Company” for purposes of the CTA. However, certain nonprofits may fall under one of the twenty-three exemptions to the CTA. The following three categories of nonprofit entities are exempt under the CTA:

- Organizations described in Section 501(c) of the Internal Revenue Code (the “Code”), determined without regard to Section 508(a);
- Certain political organizations; and
- Certain non-exempt charitable or split interest trusts.

A Section 501(c) organization is a tax-exempt nonprofit organization designated under the Code. Thus, nonprofit status alone is not sufficient for an entity to be exempt under the CTA; the nonprofit must also be tax-exempt. The most common Section 501(c) nonprofits are those organized for religious, charitable, scientific, literary, or educational purposes, social welfare organizations, labor organizations, business leagues, social and recreational clubs, and organizations that hold title of property for exempt organizations. Section 501(c) organizations are exempt from the CTA irrespective of whether or not they have provided notice to the IRS of their tax-exempt status pursuant to Section 508(a).

Exempt political organizations under the CTA are those defined in Section 527(e)(1) of the Code, which includes a party, committee, association, fund, or other organization that is organized and operated primarily for the purpose of accepting contributions or making expenditures, or both, for the function of influencing or attempting to influence a nomination or election for a public office or political organization. To fall under the exemption, the political organization must also be exempt from tax under the Code.

Trusts that are not exempt from taxation may, however, be exempt from the CTA if they are either charitable trusts or split interest trusts under Section 4947(a) of the Code. A charitable trust under Section 4947(a)(1) is not exempt from tax but may still qualify for an exemption under the CTA if all of the unexpired interests of the trust are devoted to one or more charitable purposes. A Section 4947(a)(2) split interest trust is a trust with both charitable and non-charitable beneficiaries.

A notable exemption to the CTA is for entities assisting a tax-exempt entity. To qualify for the exemption, the assisting entity must satisfy all four of the following criteria:

1. The entity must operate exclusively to provide financial assistance to, or hold governance rights over, any of the three aforementioned categories of tax-exempt entities;
2. The entity must be a U.S. person under the Code (the definition of “U.S. person” is inclusive of domestic

- partnerships, corporations, estates, and trusts);
3. The entity must be beneficially owned or controlled exclusively by one or more U.S. persons that are citizens or lawfully admitted for permanent residence; and
 4. The entity must derive at least a majority of its funding or revenue from one or more U.S. persons or citizens lawfully admitted for permanent residence.

Even those nonprofit entities that do not qualify for one of the exemptions aimed specifically at nonprofit entities may still qualify for one of the other available exemptions from reporting. It is therefore important for individuals who control and advise nonprofit entities, such as board members and trustees, to assess whether or not the respective nonprofit entity is required to report beneficial ownership information under the CTA. While FinCEN has made clear that its initial efforts to enforce the CTA will primarily be aimed at educating Reporting Companies about the CTA's reporting requirements, those who fail to comply with the CTA may be subject to civil and criminal penalties.

Partridge Snow & Hahn's [Corporate & Business Group](#) is ready to answer questions regarding this article. For more information, contact [Lawrence J. Sheh](#), [Elizabeth O. Manchester](#), [Brian J. Reilly](#), or Madeline M. Ursini.

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