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CAMICO Alert: Corporate Transparency Act January/February 2024

Corporate Transparency Act (“CTA”) Frequently Asked Questions on CAMICO’s Loss Prevention Advisory Hotline¹ Updated February 7, 2024²

This document is not intended to be used or relied upon as a substitute for a firm’s compliance with applicable professional standards nor is it intended to be a substitute for seeking legal advice. CAMICO presents this FAQ guide for reference purposes only to highlight common inquiries received from policyholders related to the new beneficial ownership reporting rules under the Corporate Transparency Act. CAMICO policyholders are welcome to contact CAMICO with specific questions, comments, or concerns at 1.800.652.1772 or by email at lp@camico.com. Additional risk management resources are available on CAMICO’s Members-Only Site (<https://www.camico.com>).

Section 1: Background Information³

Q. What entities are subject to the new CTA reporting requirements?

A. Entities required to comply with the CTA (“Reporting Companies”) include corporations, limited liability companies (LLCs), and other types of companies created by a filing with a Secretary of State (“SOS”) or equivalent official. The CTA also applies to **non-U.S.** companies registered to do business in the U.S. through a filing with a SOS or equivalent official. Since the definition of a domestic entity under the CTA is extremely broad, additional entity types could be subject to CTA reporting requirements based on individual state law formation practices.

There are a number of exceptions to who is required to file under the CTA. Many of the exceptions are entities already regulated by federal or state governments and as such already disclose their beneficial ownership information to governmental authorities.

Another notable exception is for “*large operating companies*” defined as companies that meet **all** of the following requirements:

- Employ at least 20 full-time employees in the U.S.
- Gross revenue (or sales) over \$5 million on the prior year’s tax return
- An operating presence at a physical office in the U.S.

Note that each exemption has detailed requirements. Refer to [Reference Materials | FinCEN.gov](#) for additional information.

¹ For additional information regarding the beneficial ownership reporting requirements under the CTA, refer to FinCEN’s Frequently Asked Questions document (<https://www.fincen.gov/boi-faqs>) or to the FinCEN Reference Materials (<https://www.fincen.gov/boi/Reference-materials>).

² The information contained in this FAQ is based on information promulgated as of the date of this document.

³ This *Background Information* section is a high-level overview of a few key provisions of the beneficial ownership reporting requirements under the Corporate Transparency Act and as such is NOT intended to be all-inclusive. CAMICO strongly recommends that CPAs refer to [Reference Materials | FinCEN.gov](#) for additional information and specific requirements for compliance under the rules as promulgated.

Q. Who is considered a “beneficial owner” of a Reporting Company?

A. A beneficial owner is any individual who, directly or indirectly, exercises “substantial control” or owns or controls at least 25% of a Reporting Company’s ownership interests.

An individual exercises “substantial control” if the individual (i) serves as a senior officer of the company; (ii) has authority over the appointment or removal of any senior officer or a majority of the board; or (iii) directs, determines, or has substantial influence over important decisions made by the Reporting Company. Thus, senior officers and other individuals with control over the company are beneficial owners under the CTA, even if they have no equity interest in the company.

In addition, individuals may exercise control directly or indirectly, through board representation, ownership, rights associated with financing arrangements, or control over intermediary entities that separately or collectively exercise substantial control.

CTA regulations provide a much more expansive definition of “substantial control” than in the traditional tax sense of assessing “ownership interest,” so merely relying on ownership information from an entity’s tax return would NOT be appropriate or prudent. Many companies may need to seek legal guidance to determine their organization’s beneficial owners.

Refer to [Reference Materials | FinCEN.gov](#) for additional information.

Q. What information does a Reporting Company need to report about its beneficial owners, and how will it be filed?

A. For each beneficial owner, a Reporting Company will have to provide the name, date of birth, residential address, and an identifying number from an acceptable identification document such as a passport or U.S. driver’s license, and the name of the issuing state or jurisdiction of the identification document. The Reporting Company will also have to report an image of the identification document used to obtain the identifying number used. Filing will be done through an online portal on the Beneficial Ownership Information Report (BOIR) form, which at the time of this writing remains under development by FinCEN.

Refer to [Reference Materials | FinCEN.gov](#) for detailed information.

Q. Do all Reporting Companies need to report *Company Applicants*⁴?

A. No, only **new** Reporting Companies — those formed (or, in the case of non-U.S. companies, registered) on or after January 1, 2024 — must report Company Applicants to FinCEN.

⁴ A *Company Applicant* is the individual who directly files the document that creates or registers a company. Refer to [Reference Materials | FinCEN.gov](#) for detailed information.

Q. What are the current deadlines for compliance with the new BOI reporting requirements?

A. As currently promulgated, the CTA's reporting deadlines are as follows:

- All **new** Reporting Companies — those formed (or, in the case of non-U.S. companies, registered) on or after January 1, 2024 — must report required information **within 90⁵ days** after their formation or registration.
- All **existing** Reporting Companies — those formed or registered before January 1, 2024 — must report required information **no later than** January 1, 2025.
- **Updated BOI reports** will be due within **30 calendar days** after a change occurs.⁶
- **Corrected BOI reports** will be due within **30 calendar days** after the Reporting Company becomes aware of, or has reason to know of, an inaccuracy.⁷

Refer to [Reference Materials | FinCEN.gov](#) for detailed information and updated guidance regarding deadline changes that may be promulgated.

Q. Are the penalties for noncompliance significant?

A. Yes. Penalties for willfully violating CTA reporting requirements include (1) civil penalties of up to \$591⁸ per day that a violation is not remedied, (2) a criminal fine of up to \$10,000, and/or (3) imprisonment of up to two years. A safe harbor from the penalty is available to Reporting Companies that file corrected reports with FinCEN no later than 90 days after submission of an inaccurate report (31 U.S.C. 5336(h)(3)(C)).⁹

Refer to [Reference Materials | FinCEN.gov](#) for more information regarding penalties for noncompliance.

Section 2: Risk Management Considerations

Q. Is my CPA firm a potential Reporting Company?

A. Maybe. As currently promulgated, the CTA has an exemption for “any public accounting firm” registered in accordance with Section 102 of the Sarbanes-Oxley Act of 2002 (firms registered with the Public Company Accounting Oversight Board). However, other public accounting firms could be deemed Reporting Companies subject to compliance with the CTA, unless the firm falls under the exception for “large operating companies” as defined in *Section 1: Background Information*. Begin to prepare your

⁵ FinCEN issued a final rule on November 29, 2023, extending the deadline for companies created or registered in 2024 to file initial beneficial ownership information (BOI) reports to 90 calendar days after their formation or registration (was originally 30 days).

⁶ Under the current regulations as promulgated, updated reports will be required when there is a change to previously reported information about the Reporting Company and/or its beneficial owners.

⁷ Under the current regulations as promulgated, corrected reports will be required when previously reported information about the Reporting Company, its beneficial owners, or its Company Applicants was inaccurate.

⁸ The penalties for [BOI reporting violations](#) have been inflation adjusted and are increased to \$591 a day from \$500, effective January 25, 2024.

⁹ <https://www.federalregister.gov/d/2022-21020/p-223>

own firm now for compliance if you are deemed to be a Reporting Company under currently promulgated CTA guidance.

Q. Would CPAs be considered beneficial owners of their clients?

A. CPAs generally will not qualify as beneficial owners if they merely provide clients with traditional accounting and tax-related services. Providing ordinary, arms-length advisory or other third-party professional services to a Reporting Company is not considered “substantial control.” However, there may be non-traditional services performed by a CPA firm that could raise them to the level of a beneficial owner. For example, a CPA in a firm who performs “senior officer” duties for a client deemed to be a Reporting Company may rise to the level of a beneficial owner of that entity. The facts and circumstances of the services performed (e.g., “CFO-to-Go” type services) should be evaluated with the client and legal counsel as appropriate to determine whether the services performed by the individual rise to the level of exercising substantial control and if therefore the individual should be considered a beneficial owner.

Q. What is the concern regarding the unauthorized practice of law (“UPL”) if CPAs help clients prepare for the CTA?

A. CAMICO is concerned UPL allegations might be made against CPAs providing CTA-related services that include determining if an exemption applies to the nature of the entity or whether certain legal relationships constitute “beneficial ownership.” As each state has its own definitions of what services are considered UPL, and the state(s) in which your firm is located **and** the state(s) in which your clients are located will be relevant to the UPL determination, the possibility of UPL allegations is a significant risk. As of the date of this writing, no state has clarified whether providing advice to clients regarding the CTA would, or would not, be viewed as an unauthorized practice of law.

Q. Does FinCEN allow CPAs to file the required BOI reporting form on behalf of their clients? If so, would this eliminate the UPL risk?

A. FinCEN does allow clients and/or their authorized representatives (which would include CPAs and attorneys) to file the required BOI reporting form.

However, FinCEN has **NO** authority to opine on state law regarding the unauthorized practice of law. Consequently, as the UPL determination is not made by FinCEN but instead would be determined by the state(s) in which your firm and clients are located, it would **NOT** be prudent to rely solely on FinCEN’s acceptance of CPAs filing such forms to determine the appropriateness of CPAs providing clients with CTA-related guidance and advice in determining if an exemption applies to the nature of the entity or whether certain legal relationships constitute “beneficial ownership.” In addition, as CAMICO is NOT a “decider of fact” in determining what would be deemed the unauthorized practice of law for each respective state, we cannot opine on the appropriateness of CPA firms rendering services such as determining if an exemption applies due to the nature of the entity or assessing whether certain legal relationships constitute “beneficial ownership.”

Q. Why are CPAs and tax practitioners allowed to prepare FBAR reports and not face UPL-related concerns, but potentially face UPL issues by assisting with FinCEN BOI reports?

A. The primary difference is that the IRS is responsible for collecting and processing FBAR reports (FinCEN 114) and as such, tax practitioners have been granted limited authority for such preparation because it is administered by the IRS. As the CTA is not a part of the tax code, and to date, the IRS has **not** been designated an enforcement agent for the CTA, the assessment and application of many of the requirements set forth in the regulations, including but not limited to the determination of beneficial ownership interest, may necessitate the need for legal guidance and direction.

Q. I understand that determining whether an exemption applies to the nature of the entity or assessing whether certain legal relationships constitute “beneficial ownership” may constitute UPL, but what if I have a straightforward client, with NO complexity. Would this scenario eliminate the risk associated with the UPL issue?

A. Yes, if your client is a straightforward entity with NO complexity that is obviously deemed a Reporting Company under the regulations, and identifying beneficial owners would require no legal advice or legal interpretation of facts and circumstances, the UPL risk would not be an issue.

With that said, CAMICO would strongly recommend that you have a standalone engagement letter for the filing of the initial BOI report that clarifies the limited “administrative services” or “limited CTA advisory services” you are rendering and contains appropriate disclaimer language. CAMICO would also recommend having the client provide written representations acknowledging that they are responsible for the accuracy and completeness of the information they provide to you for purposes of completing the form on their behalf, and they also acknowledge their understanding that you are NOT performing any legal services as part of this limited service. CAMICO has developed the following engagement letter templates and a client representation letter for this purpose:

- Engagement Letter: Administrative Services — Filing of Initial BOI Report
- Engagement Letter: Limited CTA Advisory Services — Filing of Initial BOI Report
- Management Representation Letter — Filing of Initial BOI Report

These templates are available on the Members-Only Site’s Engagement Letter Resource Center.

Q. From a cybersecurity and data privacy perspective, what are the risk management concerns associated with firms collecting and storing beneficial ownership information received from clients that is deemed necessary for reporting to FinCEN?

A. Cyber-related exposures are a concern, as CPA firms are already considered a high-risk target for cyber criminals because of the abundance of client data found on firms’ computers. As CPA firms consider offering CTA-related services, firms need to ensure they maintain a robust cybersecurity strategy that is both people-driven and integrated with technology to reduce the risk of a cybersecurity incident as well as ensure that the firm remains compliant with all applicable data security and privacy protection laws. Given the significant amount of additional personally identifiable information (“PII”) on each beneficial owner that will need to be received by the firm, firms should consider revisiting and updating, as appropriate, their Written Information Security Plan (“WISP”) and if applicable, Privacy Policy.

If such services are to be performed for attest clients, CPAs must take precautionary steps to avoid violating the hosting interpretation and inadvertently impairing their firm's independence. CAMICO recommends CPAs serving attest clients with CTA-related services include record retention language in their engagement letters to clarify that the client has the sole responsibility for ensuring they retain and maintain in their possession all their financial and non-financial information, data, and records. Refer to CAMICO's engagement letter templates for sample language.

Q. What risk management steps should I be taking now to prepare?

A. Consider the following steps:

- Familiarize yourself with the Corporate Transparency Act and the beneficial ownership reporting requirements. As a starting point, if you have not already done so, review CAMICO's article published in the July 2023 IMPACT 123 newsletter titled *Corporate Transparency Act/Beneficial Ownership Information Reporting — Risk Management Considerations for CPA Firms*, which can be found on CAMICO's Members-Only Site in the "IMPACT Newsletter" portlet at the top right of the home page. In addition, stay current with any further guidance promulgated by FinCEN. (Refer to **Additional Resources** section below.)
- Inform and advise your clients **in writing** regarding the new beneficial ownership reporting requirements under the CTA. CAMICO offers a *Client Notification Letter — Corporate Transparency Act — Beneficial Ownership Info Reporting* template for this purpose, which can be found on CAMICO's Members-Only Site in the "IMPACT Newsletter" portlet at the top right of the home page (IMPACT 123).
- Determine your firm's willingness, knowledge, expertise, and risk tolerance to take on CTA compliance work and if you decide to do so, assess what services you are willing to offer and how best to deliver those services. For example, some firms may decide to structure such engagements under the umbrella of qualified legal counsel to avoid any potential for UPL-related allegations and limit the firm's involvement to working under the direction and approval of the attorney. There is a broad spectrum of services from purely limited administrative-type services (filing the BOI report) to full-scale advising with respect to assessing and interpreting facts, circumstances, and related documents to determine if an entity is deemed to be a Reporting Company as well as identifying who may rise to the level of a beneficial owner under the rules as promulgated. The scope and limits of any CTA-related services you deem appropriate to perform should be well documented and consistent with the client's understanding and expectations.
- Modify your traditional tax and financial statement engagement letters to include language that specifically **disclaims** the firm's involvement in assisting clients with CTA compliance under the terms of that agreement, as any such CTA-related services that a firm deems appropriate to perform should be covered under a separate standalone CTA engagement letter.

The below engagement letter clause assumes that the firm will NOT be rendering any CTA-related services:

Starting in 2024, the Corporate Transparency Act ("CTA") mandates certain entities (primarily small and medium-size businesses) created in or registered to do business in the United States report information about their beneficial owners — the individuals who ultimately own or control a company — to the Financial Crimes Enforcement Network

(“FinCEN”). Management is responsible for <Client>’s compliance with the CTA, if applicable to its business, and for ensuring that any required reporting of beneficial ownership information is timely filed with FinCEN as required by the CTA. As <Firm> is not rendering any legal services as part of our engagement, we will not be responsible for advising you regarding the legal or regulatory aspects of your company’s compliance with the CTA, nor are we responsible for the preparation or submission of <Client>’s beneficial ownership information reports to FinCEN. If you have any questions regarding <Client>’s compliance with the CTA, including but not limited to whether an exemption may apply to your organization or to ascertain whether relationships constitute beneficial ownership under CTA rules, we strongly encourage you to consult with qualified legal counsel experienced in this area.

If your firm DOES anticipate providing some level of CTA-related service to your clients, you should modify the engagement letter disclaimer to clarify that any services would be covered under a separate engagement letter. See suggested language below:

Starting in 2024, the Corporate Transparency Act (“CTA”) mandates certain entities (primarily small and medium-size businesses) created in or registered to do business in the United States report information about their beneficial owners — the individuals who ultimately own or control a company — to the Financial Crimes Enforcement Network (“FinCEN”). Management is responsible for <Client>’s compliance with the CTA, if applicable to its business, and for ensuring that any required reporting of beneficial ownership information is timely filed with FinCEN as required by the CTA. Our firm’s services under the terms of this agreement do NOT include any advising or consulting related to your entity’s compliance with the CTA. If you have any questions regarding <Client>’s compliance with the CTA, including but not limited to whether an exemption may apply to your organization or to ascertain whether relationships constitute beneficial ownership under CTA rules, please contact us. Any CTA-related services we agree to perform will be covered under a separate engagement letter.

Section 3: Coverage Implications

Q. What are the coverage implications, if any, under CAMICO’s professional liability policy for assisting clients with CTA-related services?

A. The CAMICO policy responds to a great variety of claims due to its broad definition of covered professional services. The use of a broad definition means that as new service areas arise, the policy does not need to be amended to extend coverage to the new services. Each claim is unique, however, and must be reviewed according to its specific allegations and in conjunction with all the terms and conditions of the policy. CAMICO intends that coverage will respond to the typical CTA claim we anticipate receiving, particularly if at the time the services are rendered both the state in which the firm and client reside have not deemed that providing CTA-related services to be the unauthorized practice of law (refer to **next question**). However, it is important to note that insurance companies are under strict regulatory guidelines that typically preclude carriers from insuring parties for their criminal acts. As such, professional liability policies, including those for accountants, have an exclusion for any claim based on, or arising from or related to, a criminal act. So, as UPL violations in some states may be treated as criminal matters, any such claims could trigger this exclusion.

If you have any specific coverage-related questions, please contact CAMICO at 1.800.652.1772 and ask to speak with your underwriter.

Q. Since no state has yet to provide a definitive statement on whether CTA-related advisory services would be considered the unauthorized practice of law, what happens from a coverage perspective if at a later date our state and/or the state in which the client resides determines that such services are in fact deemed to be the unauthorized practice of law?

A. As noted in the prior question, CAMICO intends that coverage will respond to the typical claim we anticipate receiving. Every claim is fact-specific, and the pertinent facts of any claim scenario must be analyzed. As such, each claim would be subject to the policy's terms and conditions, as well as the **legal and/or professional standards of care at the time the services were rendered**. Therefore, **future changes** in the legal and/or professional standards of care for such services would not be a pertinent consideration in determining coverage.

Q. How does the CAMICO policy respond if there are allegations made against our firm for fraudulent, criminal and/or illegal activity related to CTA services?

A. How the CAMICO policy responds is not unique just to CTA-related services. Insurance companies are under strict regulatory guidelines that typically preclude carriers like CAMICO and others from insuring parties for criminal acts and fraud. As such, professional liability policies, including those for accountants, have exclusions for any claim based on, or arising from or related to, criminal acts or other acts deemed to be fraudulent in nature.

Regarding defense costs, CAMICO insureds are entitled to legal defense when there is a potential for indemnity coverage, subject to policy terms and conditions. When covered negligent acts are alleged to have occurred during the performance of professional services, CAMICO will provide for your defense, although CAMICO cannot pay damages on your behalf if you admit to or are found guilty of engaging in criminal or fraudulent acts.

If the only allegations against you are uncovered acts, CAMICO will not be able to defend or indemnify you. However, civil complaints that solely allege fraud or criminal activity are uncommon in our decades of defending CPA firms.

Section 4: Additional Resources

Q. Where can I find additional information?

A. FinCEN has published resources and materials, including a *Small Entity Compliance Guide* and FAQs. Refer to select links below:

Beneficial Ownership Information Reporting Frequently Asked Questions | www.fincen.gov/boi-faqs
[Small Business Resources | FinCEN.gov](#)
[Reference Materials | FinCEN.gov](#)
[BOI Newsroom | FinCEN.gov](#)

The AICPA also has some resources available:

[Beneficial ownership information \(BOI\) reporting | Resources | AICPA & CIMA \(aicpa-cima.com\)](#)