

Goodwin Corporate Transparency Act Toolkit

Transition

Existing Entity Compliance Plan

1. **Timing:** Domestic reporting companies and foreign reporting companies created or registered prior to January 1, 2024 must complete an initial report with FinCEN prior to **January 1, 2025**.¹
2. **Preparation:** Create a list of all entities – domestic and foreign – that are corporations, limited liability companies or limited partnerships formed or registered in the U.S.
 - a. Goodwin Tip: Structure charts make this process easier.
 - b. Goodwin Tip: Consult with your Goodwin contact if you have entities that (i) are formed or registered by filing a document with a secretary of state, but are not corporations, limited liability companies or limited partnerships, or (ii) are created or registered with an Indian tribe.
3. **Identify Any Exemptions:** Analyze each identified entity and determine whether an exemption applies. See the exemptions listed on Exhibit A.
 - a. Goodwin Tip: Evaluate entities from the top of the structure down for efficiency.

*Entities for which no exemption has been identified are “**Reporting Companies**”
4. **Collect Reporting Company Information:** For each Reporting Company, identify the following information:
 - a. Full legal name
 - b. Any trade names or DBAs (registered or not)
 - c. Street address of principal place of business (if a domestic Reporting Company) or primary location in the United States where the Reporting Company conducts business (if a foreign Reporting Company)²
 - d. Jurisdiction of formation
 - e. For a foreign Reporting Company, the state or tribal jurisdiction where the company first registers
 - f. Taxpayer ID (if issued by a foreign jurisdiction, the name of such jurisdiction)

¹ A **domestic reporting company** is a corporation, a limited liability company, or created by the filing of a document with a secretary of state or any similar office under the law of a U.S. state or Indian tribe. A **foreign reporting company** is a corporation, limited liability company or other entity formed under the law of a foreign country and registered to do business in any U.S. state or tribal jurisdiction by the filing of a document with a secretary of state or any similar office under the law of a U.S. state or Indian tribe.

² Post office boxes, private mailboxes, and addresses of business agents or corporate agents will not fulfil this requirement.

5. **Identify Beneficial Owners:** For each Reporting Company, identify each “Beneficial Owner”. See [Exhibit B](#).³ Please reach out to your Goodwin contact for additional guidance if you identify a Beneficial Owner that holds an interest in a reporting company through one or more exempt entities (see [Exhibit A](#) for a list of exempt entities).
6. **Collect Beneficial Owner Information:** For each Beneficial Owner, identify the following information:⁴

<ul style="list-style-type: none">• FinCEN Identifier	OR	<ul style="list-style-type: none">• Full Legal Name• Date of Birth• Current Residential Street Address• Image of Identification Document⁵• Identification Number and Issuing Jurisdiction of Identification Document
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- a. Goodwin Tip: Encourage each Beneficial Owner to obtain FinCEN Identifiers.

³ An entity that would be a reporting company but for the pooled investment vehicle exception but which is formed under the laws of a foreign country) is deemed to be a Reporting Company, but its reporting obligation is limited to reporting information only with respect to the individual having the greatest authority over the strategic management of the entity.

⁴ No Company Applicant information is required for domestic reporting companies and foreign reporting companies created or registered prior to January 1, 2024.

⁵ The following are acceptable identification documents: a non-expired U.S. passport; a non-expired identification document issued by a state, local government, or Indian tribe for the purpose of identifying the individual; a non-expired U.S. state driver’s license; or a non-expired foreign passport.

Exhibit A: Exemptions

Public Company [31 C.F.R. § 1010.380(c)(2)(i)]	Issuer of a class of securities registered under Section 12 of the Securities Exchange Act of 1934; or	
	Required to file supplementary and periodic information under Section 15(d) of Securities Exchange Act of 1934.	
Government Authority [31 C.F.R. § 1010.380(c)(2)(ii)]	Established under the laws of the United States, an Indian tribe, a state, a political subdivision of a state, or under an interstate compact between two or more states; and	
	Exercises governmental authority on behalf of such jurisdiction.	
Certain Other Highly-Regulated Entities	Banks [31 C.F.R. § 1010.380(c)(2)(iii)]	
	Federal and state credit unions [31 C.F.R. § 1010.380(c)(2)(iv)]	
	Bank holding companies and savings and loan holding companies [31 C.F.R. § 1010.380(c)(2)(v)]	
	Money transmitting businesses and money services businesses registered with FinCEN [31 C.F.R. § 1010.380(c)(2)(vi)]	
	Securities brokers or dealers registered with the Securities and Exchange Commission (“SEC”) <u>SEC</u> [31 C.F.R. § 1010.380(c)(2)(vii)]	
	Exchanges or clearing agencies registered with the SEC [31 C.F.R. § 1010.380(c)(2)(viii)]	
	Other entities registered with the SEC under the Securities Exchange Act of 1934 [31 C.F.R. § 1010.380(c)(2)(ix)]	
	Financial market utilities designated by the Financial Stability Oversight Council. [31 C.F.R. § 1010.380(c)(2)(xvii)]	

Goodwin Corporate Transparency Act Toolkit | Transition

Investment Companies and Investment Advisers [31 C.F.R. § 1010.380(c)(2)(x)]	Investment company as defined in Section 3 of the Investment Company Act of 1940 or an investment adviser as defined in Section 202 of the Investment Advisers Act of 1940; and	
	Registered with the SEC under the Investment Company Act of 1940 or the Investment Advisers Act of 1940.	
Venture Capital Fund Advisers [31 C.F.R. § 1010.380(c)(2)(xi)]	Investment adviser described in Section 203(l) of the Investment Advisers Act of 1940; and	
	Has filed Item 10, Schedule A, and Schedule B of Part 1A of Form ADV with the SEC.	
Insurance Companies and State-Licensed Insurance Producers [31 C.F.R. § 1010.380(c)(2)(xii & xiii)]	Insurance companies defined in Section 2 of the Investment Company Act of 1940; or	
	State-licensed insurance producers that have operating presence at a physical office in the United States.	
Entities registered under the Commodity Exchange Act [31 C.F.R. § 1010.380(c)(2)(xiv)]	Registered entity as defined in Section 1a of the Commodity Exchange Act; or	
	Is a futures commission merchant, introducing broker, swap dealer, major swap participant, commodity pool operator, commodity trading adviser (each as defined in Section 1a of the Commodity Exchange Act), or a retail foreign exchange dealer (as defined in Section 2(c)(2)(B) of the Commodity Exchange Act), and is registered with the Commodity Futures Trading Commission.	
Public Accounting Firms [31 C.F.R. § 1010.380(c)(2)(xv)]	Registered under Section 102 of the Sarbanes-Oxley Act of 2002.	
Regulated Public Utilities [31 C.F.R. § 1010.380(c)(2)(xvi)]	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.	

<p>Pooled Investment Vehicles Operated by Certain Exempt Entities</p> <p>[31 C.F.R. § 1010.380(c)(2)(iii) and 31 C.F.R § 1010.380(f)(7)]</p>	<p>Pooled Investment Vehicles (as defined below) that is operated or advised by a person who is a CTA exempt (i) bank; (ii) credit union; (iii) SEC-registered broker/dealer; (iv) SEC registered investment company or investment adviser; or (v) venture capital fund adviser.</p>	<p><i>Prior to relying on the Pooled Investment Vehicle Exemption, please reach out to your Goodwin contact for guidance.</i></p>
	<p>Definition of Pooled Investment Vehicles:</p> <ol style="list-style-type: none"> 1. Any investment company as defined in Section 3(a) of the Investment Company Act of 1940; or 2. Any company that <ol style="list-style-type: none"> a. Would be an investment company under Section 3(a) of the Investment Company Act of 1940 but for the exclusion provided by Section 3(c)(1) or Section 3(c)(7) of that Act; and b. Is identified by its legal name by the applicable investment adviser in its Form ADV filed with the SEC or will be so identified in the next annual updating amendment to Form ADV required to be filed by the applicable investment adviser pursuant to Rule 204-1 under the Investment Advisers Act of 1940. 	
<p>Tax-Exempt Entities</p> <p>[31 C.F.R. § 1010.380(c)(2)(xix)]</p>	<p>Organization described in Section 501(c) of the Internal Revenue Code of 1986 (“IRC”) and exempt from tax under 501(a) of the IRC; or</p>	
	<p>Political organization defined in Section 527(e)(1) of the IRC that is exempt from tax under 527(a) of the IRC; or</p>	
	<p>Trust described in paragraphs (1) or (2) of IRC Section 4947(a).</p>	
<p>Entities Assisting Tax-Exempt Entities</p> <p>[31 C.F.R. § 1010.380(c)(2)(xx)]</p>	<p>Operates exclusively to provide financial assistance or to hold governance rights over any of the exempt entities described in “Tax-Exempt Entities” above; and</p>	
	<p>Is a United States person; and</p>	
	<p>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</p>	

<p>Large Operating Company</p> <p>[31 C.F.R. § 1010.380(c)(2)(xxi)]</p>	<p>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.</p>	
	<p>Employs more than 20 full time employees in the United States; and</p> <p>Definition of “full time”: 26 C.F.R. §§ 54.4980H-1(a) and 54.4980H-3 (except that the term “United States” as used in 26 C.F.R. §§ 54.4980H-1(a) and 54.4980H-3 has the meaning provided in § 1010.100(hhh)).</p>	
	<p>Has an operating presence at a physical office within the United States; and</p>	
	<p>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 gross receipts or sales from sources outside of the United States. If a consolidated return was filed, the applicable amount shall be the amount reported on the consolidated return for such group.</p>	
<p>Wholly Owned Subsidiaries of Certain Exempt Entities</p> <p>[31 C.F.R. § 1010.380(c)(2)(xxii)]</p>	<p>Entity the ownership interests of which are controlled or wholly owned, directly or indirectly, by one or more exempt entities under the CTA, but does not apply if such entity or entities are exempt under any of the following exemptions:</p> <ul style="list-style-type: none"> • <u>Pooled investment vehicle</u>, • <u>Money transmitting or money service business</u>, • An entity that operates <u>exclusively to provide financial assistance to or hold governance rights over tax-exempt entities</u>, or • An <u>inactive entity</u>. 	<p><i>If an entity is not wholly owned by one or more qualifying exempt entities, then additional analysis is required to determine whether (1) one or more exempt entities exercise sufficient control over the entity for it to be exempt or (2) there are beneficial owners that need to be reported.</i></p>

Inactive Entities [31 C.F.R. § 1010.380(c)(2)(xxiii)]	Formed on or before January 1, 2020; and	
	Not engaged in active business; and	
	Not wholly or partially owned, directly or indirectly, by a foreign person; and	
	Has not experienced a change in ownership in the prior 12 month period; and	
	Has not sent or received any funds in an amount greater than \$1,000 in the prior 12 month period; and	
	Does not otherwise hold any kind or type of assets, including an ownership interest in any other entity.	

Exhibit B: Beneficial Owners

A **beneficial owner** is any individual who, directly or indirectly, (i) exercises **substantial control** over the Reporting Company, or (ii) **owns or controls 25% or more of the ownership interests** of the Reporting Company.

- **Substantial Control:** Individuals that exercise substantial control over a Reporting Company including:
 - Senior Officers: Individuals serving as senior officers of the Reporting Company, including the President; Chief Financial Officer; General Counsel; Chief Executive Officer; Chief Operating Officer; or any other officer, regardless of title, who performs a similar function for the Reporting Company.
 - Authority Over Appointment: Individuals who have authority over the appointment or removal of any senior officer or a majority of the board of directors (or similar body) of the Reporting Company.
 - Important Decisions: Individuals who direct, determine or have substantial influence over important decisions made by the Reporting Company.⁶
 - Other Substantial Control: Individuals may directly or indirectly exercise substantial control over a Reporting Company in other ways.⁷
- **Ownership Interests:** Individuals who directly or indirectly own or control 25% or more of the ownership interests of the Reporting Company.
 - “Ownership Interests” include:
 - Any equity, stock or similar instrument;
 - Preorganization certificate or subscription;
 - Transferrable 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;
 - Capital or profits interests;

⁶ Important decisions may include: (1) the 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; (2) the reorganization, dissolution, or merger of the Reporting Company; (3) major expenditures or investments, equity issuances, incurrence of any significant debt, or approval of operating budget of the Reporting Company; (4) the selection or termination of business lines or ventures, or geographic focus, of the Reporting Company; (5) compensation schemes and incentive programs for senior officers; (6) the entry into or termination, or the fulfillment or nonfulfillment, of significant contracts; or (7) amendments of any substantial governance documents of the Reporting Company, including the articles of incorporation or similar formation documents, bylaws, and significant policies or procedures. **This list is not exhaustive.**

⁷ Other forms of substantial control may include: (1) board representation; (2) ownership or control of a majority of the voting power or voting rights of the Reporting Company; (3) rights associated with any financing arrangement or interest in a Reporting Company; (4) control over one or more intermediary entities that separately or collectively exercise substantial control over a Reporting Company; (5) arrangements or financial or business relationships, whether formal or informal, with other individuals or entities acting as nominees; or (6) any other contract, arrangement, understanding, relationship or otherwise. **This list is not exhaustive.**

- Instruments convertible into the foregoing (e.g., SAFE, convertible note, etc.);⁸
 - Warrants or rights, and options or privileges to acquire or sell a share or interest in a Reporting Company;
 - Any put, call, straddle, or other option or privilege of buying any ownership interest in a Reporting Company (except to the extent that such option or privilege is created and held by a third party without the knowledge or involvement of the Reporting Company; and
 - Any other instrument, contract, arrangement, understanding, relationship, or mechanism used to establish ownership.⁹
- **Debt:** Considered an ownership interest only if it enables the holder to exercise the same rights as an equity interest, including the right to convert the debt instrument into equity or other ownership instrument.
- **Calculating Ownership:** Total ownership interest that an individual owns or controls, directly or indirectly, is calculated as a percentage of the total outstanding ownership interests.
- Calculations are performed at the present time, and any options or similar interests of the individual are treated as exercised.
 - For reporting companies that issue capital or profit interests, the individual's ownership interests are the individual's capital and profit interests in the entity, calculated as a percentage of the total outstanding capital and profit interests in the entity.
 - 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:
 - (1) 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, and
 - (2) The total combined value of the ownership interests of the individual as a percentage of the total outstanding value of all classes of ownership interest.
 - **If the facts and circumstances do not permit such calculations to be performed with reasonable certainty, then any individual who owns 25% or more of any class or type of ownership interest of a Reporting Company shall be deemed to own or control 25% or more of the ownership interests of the Reporting Company.**

⁸ Convertible securities are analyzed on an as-converted basis, assuming that only the subject individual's convertible securities have been converted for purposes of the calculation.

⁹ A person may have a direct or indirect ownership or control of ownership interests through any contract, arrangement, understanding, or relationship, including (1) joint ownership of an undivided interest; (2) through another individual acting as a nominee, intermediary, custodian, or agent on behalf of an individual; and (3) through ownership or control of one or more intermediary entities.

- **Trusts:** With respect to interests held in a trust:
 - A trustee or other person with authority to dispose of trust assets is considered to have ownership or control (such as a distribution adviser, trust protector, or other designated representative, whether acting in a fiduciary capacity or not).
 - A beneficiary is considered to own or control ownership interests held by the trust if the beneficiary is the sole permissible recipient of trust income and principal or has the right to demand distribution or withdrawal of substantially all trust assets.
 - A grantor or settlor having the right to revoke the trust or withdraw trust assets is considered to own or control ownership interests held in the trust.
- **Exemptions from the definition of “Beneficial Owner”:**
 - A **minor child** (as determined under the law of the state or tribe where the Reporting Company is created or first registered), though the information of the parent or guardian of the minor child must be reported.
 - An individual acting as a **nominee, intermediary, custodian, or agent** on behalf of another individual.
 - An individual acting **solely as an employee** of an entity (other than an employee who is a senior officer).
 - An individual whose only interest in an entity is through a **future right of inheritance** (as opposed to a present interest that person already acquired through inheritance).
 - A creditor of a Reporting Company whose rights or interests are **solely for the payment of a predetermined sum of money or a loan covenant or similar right** associated with the right to receive payment that is intended to secure or enhance the likelihood of repayment.

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