



Transparent Transactions

By **James W. J. Cooling** - February 20, 2022

Do you currently hold your aircraft title in a single-member limited liability company or an owner trust? The benefits these structures provide could change if the proposed Corporate Transparency Act (CTA) becomes law. The CTA could require disclosure of your company information to authorities and financial institutions.

On December 7th, 2021, the Financial Crimes Enforcement Network (FinCEN) published proposed regulations for implementation of the CTA. ([The full Notice of Proposed Rulemaking \(NPRM\) is here](#)). Its purpose is to provide transparency when it comes to the beneficial ownership of U.S. entities, to help detect and prevent money laundering, terrorist financing, tax fraud, and other illegal activity. Now reviewing comments, FinCEN intends to make a final ruling at a yet-to-be-determined date.

The proposed rule applies to any U.S. limited liability company, or other entity created by the filing of a document with a secretary of state or under any applicable state law or tribal jurisdiction. It also would apply to foreign entities formed in a foreign country and registered to do business in any U.S. state or tribal jurisdiction.

As currently drafted, any non-exempt company must report (1) the full name of the company (including trade names), (2) the business address of the company, (3) the jurisdiction of formation of the company, and (4) the IRS Taxpayer Identification Number (TIN). Additionally and most importantly, for every individual who exercises substantial control over such reporting company or owns/controls at least 25 percent of the ownership interests of such company (or who is responsible for such filings), the company also must report their full legal name, date of birth, and address; and

a unique identifying number via a copy of a passport, driver's license, or other state-issued document, within 14 days of the formation of the entity.

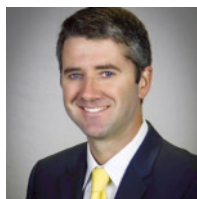
If your entity existed prior to the effective date of the CTA final rule, it must provide its report within one year of that date. For changes in previously reported information, companies have 30 days to file an updated report. The NPRM also contemplates a system whereby the information can be reported once to FinCEN, and subsequent reporting can be completed using a unique "FinCEN Identifier" specific to each individual or company.

The proposed rule lists 23 exemptions available to reporting companies. Most are for types of entities already registered and/or regulated, such as government entities, banks, public accounting firms, securities brokers, etc. However, one exemption that may apply directly to some aircraft owners is the "large operating company" exemption. Your owning entity will not be subject to the reporting if it has more than 20 full time U.S.-based employees; a physical office within the U.S., and more than \$5,000,000 in gross receipts or sales in the previous year as demonstrated by its filed tax return. Alternatively, if a company in the ownership structure meets the above requirements, there also is an exemption for any subsidiaries controlled by or wholly owned, directly or indirectly, by an exempt large operating company.

Should this final rule be implemented in a similar form to the NPRM, nearly all small or single-member companies used to own aircraft in the U.S. could be subject to the reporting. The NPRM indicates that information shared with FinCEN will be maintained in a confidential, secure, non-public database, and not subject to a Freedom of Information Act request. FinCEN is only to disclose the information for purposes specified in the CTA (e.g., an investigation of financial crimes) or to financial institutions to meet their customer due diligence requirements.

So if you use either of these ownership options, you may want to act now and consider revising it in order to meet the exemptions offered by the CTA, and avoid potentially burdensome reporting and risks associated with data security.

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James W. J. Cooling

<http://www.coolinglaw.com>

James W. J. Cooling, partner at Cooling & Herbers, P.C., focuses on assisting corporate and private clients in the acquisition, sale, and leasing of aircraft; state, federal, and international tax issues; and business planning.

