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Four Initial Takeaways from the Draft CTA Rule

The draft rule appears to embody and advance the spirit of the CTA in several key areas

1. **The draft rule casts a wide net when it comes to the kinds of legal entities that will be required to report their beneficial ownership information to the federal government.**

Perhaps the single most consequential piece of the rule is its scope—what kinds of legal entities would be required to report their beneficial ownership information? In Transparency International's written comment on the implementation of the CTA, we encouraged the Treasury Department to broadly define the phrase "other similar entity" to ensure that the rule adequately covered the corruption threats and other problems posed by anonymous shell companies. To reach this interpretation, the rule grounds this definition in *how* an entity is created—that is, by the filing of a document with a Secretary of State or similar office—and refrains from limiting the law's scope to some finite list of specific *types* or *kinds* of entities (e.g., limited liability partnerships but not partnerships writ large). In doing so, the rule provides flexibility and applicability, as determined by state practice. For example, if a state requires that certain non-CTA-exempted trusts be formed by the filing of a document with its secretary of state, then those trusts will be considered covered entities and required to report their beneficial ownership information.

2. **The draft rule also broadly defines *who all* are properly considered the "beneficial owners" of a legal entity.**

Under the CTA, a covered entity is required to provide four pieces of information for *each* beneficial owner of an entity—the name, date of birth, current address, and unique identification number (for example, a passport or driver's license number). But the scope of *who all* would be properly considered a "beneficial owner" of an entity still required some interpretation and clarification. In particular, the CTA states that a beneficial owner is someone who "exercises substantial control" over the entity, and so Treasury further defined the concept of "substantial control."

In considering the scope of "substantial control," Treasury's call for comments entertained the potential interpretation that no entity could have more than one beneficial owner who is considered in "substantial control" of the entity. Fortunately, the draft rule rejects this approach, and instead outlines a non-exhaustive list of those types of people who will be considered to exercise such substantial control. This includes, but is not limited to, those who serve as a senior officer of the company; those with authority over the appointment or removal of any senior officer of the company; and those with direction, determination, or decision of, or substantial influence over, important matters affecting the company, including but not limited to the nature, scope, or attributes of the company; major company expenditures or investments; the geographic focus of the company; the entry into, termination, or fulfillment or non-fulfillment of significant contracts; amendments of any substantial governance documents, including bylaws and significant policies or procedures; and *any other form of substantial control over the company.* Such an inclusive rule would cast an appropriately wide net and help ensure that information regarding all relevant decisionmakers is properly reported.

3. **The rule requires covered entities to file their beneficial ownership information in a truly "timely" matter.**

The CTA states that a newly formed or newly registered entity must report its beneficial ownership information "at the time of formation or registration." It also states that in the event of any *change* in an entity's beneficial ownership information, updated information must be reported "in a timely manner, and not later than one year after the date on which there is a change with respect to any information."

When it came to the specific meaning of these two key phrases—"at the time of" and "in a timely matter"—our written comment encouraged Treasury to look to the beneficial ownership directories in France and Luxembourg, which require entities to update their information within 30 days of any changes. The draft rule adopts this approach, specifying that covered entities with changes in beneficial ownership have 30 days to file an updated report. The rule also states that if and when an entity that qualifies for an exemption to the law *loses* that exemption, it similarly will have 30 days to report its ownership information. Finally, the rule spells out that *newly* formed or *newly* registered entities have 14 days to file their initial report.

4. **Unfortunately, the draft rule maintains a significant loophole to the law that could allow bad actors to escape oversight.**

The text of the CTA contains a key exemption—known as “exemption 22”—that exempts entities "of which the ownership interests are owned or controlled, directly or indirectly, by 1 or more" other specific exempt entities (including certain nonprofit organizations, political organizations, or trusts, along with many other types of entities). Our written comment encouraged the Treasury Department to narrowly limit this dangerous exemption to those entities of which the ownership interests are *wholly* owned or *wholly* controlled by such specific exempted entities. The rule adopts this limitation—but only for the ownership prong, stating: "Any entity of which the ownership interests of such entity are controlled or *wholly* owned" by specific exempted entities.

This language, if preserved in the final rule, could permit an entity whose ownership interests are *majority* controlled by a specific, exempted entity to fall outside the law. To do so, as we wrote in our comment, “would not only exponentially increase the total universe of exempted entities, but would introduce serious risks that bad actors will gain access to the U.S. financial system through jointly owned entities or other types of joint ventures” and would “provide bad actors with a clear road map for penetrating the U.S. financial system.”

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