

The Corporate Transparency Act: New Beneficial Ownership Reporting Requirements for Companies



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Earlier this year, Congress voted to override former President Trump's veto of the 2021 National Defense Authorization Act ("NDAA"). The Corporate Transparency Act ("CTA"), enacted as part of the NDAA, requires "reporting companies" to make filings with the Department of Treasury's Financial Crimes Enforcement Network ("FinCEN") which identify and disclose certain information about each of its "beneficial owners." The CTA is intended to, among other things, discourage "shell" companies, provide increased transparency of entities conducting business in the United States, and combat illegal activities such as money laundering and tax fraud.

The CTA will not become law until the effective date of the corresponding regulations to be promulgated by the Treasury Secretary ("Treasury Regulations"), which must occur no later than one year after CTA's enactment (i.e., not later than January 1, 2022). The Treasury Regulations are expected to provide further details as to the scope

and applicability of the requirements under the CTA.

What is a “Reporting Company?”

Under the CTA, the term “reporting company” means any corporation, limited liability company, or similar entity that is (i) created by the filing of a document with the secretary of state or similar office under the laws of a state or Indian Tribe, or (ii) formed under the laws of a foreign country and registered to do business in the United States by the filing of a document with the secretary of state or similar office under the laws of a state or Indian Tribe. While the CTA specifies that corporations and limited liability companies are subject to its requirements, the Treasury Regulations must provide guidance as to the CTA’s applicability to other similar entities such as partnerships and trusts.

Entities such as banks, credit unions, investment companies, public accounting firms, and 501(c) charitable organizations are excluded from the definition of “reporting company.” The CTA also excludes entities that have an operating presence in the United States, employ more than 20 full-time employees and has more than \$5,000,000 in gross receipts or sales, as demonstrated by its prior-year federal income tax return.

Who is a “Beneficial Owner?”

The CTA broadly defines the term “beneficial owner” as an entity or individual who, directly or indirectly, through contract, arrangement, understanding, relationship, or otherwise (i) exercises “substantial control” over the entity, or (ii) owns or controls not less than 25% of the “ownership interests” of the entity. The terms “substantial control” and “ownership interests” have not been defined under the CTA, and thus their interpretations remain subject to further guidance provided by the Treasury Regulations.

A beneficial owner under the CTA does not include minors (as defined in the state in which the entity is formed), certain creditors of the entity, individuals whose only interest in the entity is through a right of inheritance, and individuals acting solely as an employee of the entity or on behalf of another individual as a nominee, intermediary, custodian, or agent.

What information must be reported to FinCEN?

The CTA provides that, in accordance with the Treasury Regulations, reporting companies must submit a report to FinCEN which identifies each beneficial owner by the following: (i) full legal name; (ii) date of birth; (iii) current residential or business street address; and (iv) a unique identifying number from an acceptable identification document (i.e., a non-expired United States issued passport or State issued driver’s license), or a FinCEN identification number (which can be requested upon submission of the beneficial owner’s information required by the CTA).

Any reporting company that has been formed or registered *before* the effective date of the Treasury Regulations must, within two years of the effective date of the Treasury Regulations, submit to FinCEN a report which contains the required beneficial ownership information.

Any reporting company that has been formed or registered *after* the effective date of the Treasury Regulations must, at the time of their formation or registration, submit to FinCEN a report which contains the required beneficial

ownership information.

Any change to a reporting company's beneficial ownership information must be submitted to FinCEN within one year of such change.

Will the general public have access to beneficial ownership information reported to FinCEN?

Beneficial ownership information reported to FinCEN pursuant to the CTA will not be made available to the general public. Rather, such information must be kept confidential and disclosed only through appropriate protocols to authorized government authorities such as federal agencies engaged in national security, intelligence or law enforcement activities, for use in furtherance of such activities. Beneficial ownership information may also be disclosed to law enforcement agencies at the state, local or Tribal levels; provided, that, such disclosure is authorized by a court order in connection with a criminal or civil investigation. Additionally, FinCEN is permitted to disclose beneficial ownership information to financial institutions, with the consent of the reporting company, to facilitate the financial institution's customer due diligence requirements.

The CTA requires the Treasury Secretary to establish protocols to store beneficial ownership information submitted to FinCEN in a secure, nonpublic database which is suitable to protect the confidentiality of all such information. FinCEN must maintain the beneficial ownership information submitted under the CTA for no less than five years after the date on which the applicable reporting company terminates.

The CTA provides that any person who makes any unauthorized disclosure of beneficial ownership information may be fined up to \$250,000 and/or imprisoned for up to five years. Any such person may also be liable to the United States for a civil penalty of up to \$500 per day that the violation continues or has not been remedied.

Are there penalties for failure to comply with the CTA?

Any person who willfully provides, or attempts to provide, false or fraudulent beneficial ownership information to FinCEN, or willfully fails to report complete or updated beneficial ownership information to FinCEN may be subject to a fine of up to \$10,000 and/or imprisoned for up to two years. Further, any such person may also be liable to the United States for a civil penalty of up to \$500 per day that the violation continues or has not been remedied. However, there will be no criminal or civil penalty assessed against a person who reports inaccurate information; provided, that, such person voluntarily and promptly corrects such information within 90 days after submission and in accordance with the Treasury Regulations.

What should business owners do now?

As companies await the Treasury Regulations to provide further guidance on complying with the CTA, current business owners (and those who plan to form a new entity or register a non-United States entity) should begin to review the CTA to determine whether their entity will qualify as a "reporting company" subject to its requirements.

The attorneys in the Corporate and Securities Practice Teams at Lippes Mathias Wexler Friedman LLP are equipped to help you navigate through the new reporting requirements imposed by the CTA. Please contact any of the attorneys below to assist you or answer any questions regarding this blog.

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