The Corporate Transparency Act: Reporting Requirements and Penalties

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Beginning January 1, 2024, the Corporate Transparency Act ("CTA") will require the majority of businesses (corporations, limited liability companies, and other business entities) to report beneficial ownership information to the Department of the Treasury's Financial Crimes Enforcement Network ("FinCEN"). These requirements will particularly impact small businesses and companies that utilize complex entity structures by imposing new or additional obligations that they are not accustomed to having in the past.

Because significant penalties exist for noncompliance, business owners will need to understand what must be reported and timely file such information as the deadlines near unless a specific exemption applies. FinCEN recently published version 1.0 of its Small Entity Compliance Guide, which provides many additional details and clarifications regarding the applicability of various provisions of the CTA and its requirements.

I. Reporting Requirements

The CTA builds on the Anti-Money Laundering Act of 2020 and aims to prevent certain illicit business activities, such as financing terrorism, tax fraud, and money laundering. To achieve these goals, non-exempt companies will need to report basic company information and their beneficial owner, and make other disclosures to FinCEN.

Who Must Report? Business entities that will need to report include all corporations, limited liability companies, limited liability partnerships, business trusts, and other entities that are created or registered to do business by filing organizational forms with a secretary of state or similar office ("Reporting Company") unless an exemption applies. Conversely, sole proprietorships, general partnerships, and certain trusts are excluded from the CTA's reporting requirements.

Reported Information. In addition to the beneficial ownership information discussed below, Reporting Companies are required to disclose the following information:

- Full legal name;
- If applicable, any fictitious or "doing-business-as" ("DBA") names;
- State of organization/incorporation; and
- Tax-identification number ("TIN").

Exemptions. The CTA has 23 statutory exemptions that generally apply to larger companies and those operating in heavily regulated industries (e.g., banks, accounting firms, insurance agencies, etc.). For instance, U.S. companies that have more than 20 employees and have over $5 million in annual revenues are exempt from the CTA's reporting requirements. Likewise, governmental entities, churches, charities, and nonprofit organizations are exempt. Additionally, certain dormant entities—i.e., those no longer actively engaged in business activities and with no material assets—may be exempt provided they meet certain conditions.

Beneficial Owners of Reporting Companies. While most states do not require such information, the

heart of the CTA is its "beneficial owner" reporting requirements. Under the CTA, a beneficial owner is any individual who, "directly or indirectly," either "(i) exercises substantial control over the entity; or (ii) owns or controls not less than 25% of the ownership interests of the entity."

These expansive definitions raise numerous questions on who qualifies as a beneficial owner. For instance, an individual exercising "substantial control" is defined broadly and extends to any senior officers of the company, such as the president, CEO, CFO, COO, general counsel, and other similar positions.

Similarly, determining whether one controls 25% or more of the Reporting Company includes ownership or control acquired "through any contract, arrangement, understanding, relationship, or otherwise." As a result, the methods of calculating control are complex and depend on the ownership structure of the entity itself.

While the definition of "beneficial owner" is exceedingly broad, it does have five exceptions for (i) minor children, (ii) nominees, intermediaries, custodians, and agents, (iii) individuals acting solely as employees of the company (excluding senior officers), (iv) heirs entitled to a future inheritance interest, and (v) certain creditors of the business. Note that these exceptions are subject to even further exceptions. Therefore, careful consideration of the reporting requirements is necessary to determine whether an individual's information must be reported to FinCEN.

Any individual who is reported as a beneficial owner needs to provide the following information:

- Full legal name;
- Date of birth;
- Residential address; and
- A unique identifying number (e.g., U.S. passport, driver's license, etc.) along with an image of the underlying identification document.

Company Applicants. Reporting Companies are also required to report their "company applicant"—i.e., the person who files the company's organizational documents. This requirement will only apply to Reporting Companies formed on or after January 1, 2024. The same personal information required of beneficial owners will need to be reported by company applicants, except that company applicants may use their business address provided the filing is done "in the course of such company applicant's business."

Reporting Deadlines. The CTA's reporting requirements will not take effect until January 1, 2024. Any new Reporting Company formed *after* January 1, 2024, will need to file its report within 30 days of when the company is formed. However, following a Notice of Proposed Rulemaking issued on September 27, 2023 (the "NPRM"), FinCEN announced its proposal to extend the reporting window for new companies to 90 days (companies formed on or after January 1, 2025, will only have 30 days to file). Any existing Reporting Companies formed before January 1, 2024, will have until January 1, 2025, to file.

Below is a summary of the reporting deadlines based on the Reporting Company's date of formation:

Date of Formation	**Reporting Deadline**
Before January 1, 2024	January 1, 2025
January 1, 2024–December 31, 2024	90 days (*pending approval of the NPRM*)
After January 1, 2025	30 days

Updates. On top of the initial report, Reporting Companies must update their report any time there is a

change to any of the information initially provided. The updated report must be filed within 30 days of the change of information. For example, any of the following changes will require an updated filing:

- Change in the Reporting Company's name or address.
- Change in the residential address of a beneficial owner.
- Change in a beneficial owner's ownership interest.
- Changes to a beneficial owner's unique identifying document (e.g., name change, identifying number, etc.).
- The Reporting Company qualifies for an exemption under the CTA.

Privacy Concerns. One of the issues raised by the CTA's reporting obligations is how such disclosures will be used by FinCEN. Fortunately, the CTA includes safeguards to prevent unauthorized disclosure of reported information. All information reported is to be stored in a nonpublic database—the Beneficial Ownership Secure System ("BOSS")—and may only be disclosed by FinCEN to certain government agencies upon request. Additionally, reported information is not subject to Freedom of Information Act requests.

II. Penalties

The CTA's enforcement provisions are more than a slap on the wrist, as there are significant civil and even criminal penalties involved. Specifically, providing inaccurate, false, or fraudulent business ownership information may result in a civil fine of up to "$500 for each day that the violation continues or has not been remedied," with a maximum fine of $10,000. Moreover, the statute allows for imprisonment of up to two years.

There are even steeper penalties for the unauthorized disclosure or use of disclosures made under the CTA. Any person who knowingly discloses or uses such information without authorization from FinCEN may be subject to a $250,000 fine and/or five years in prison. Moreover, if the violation was made in connection with "a pattern of any illegal activity," the fine increases to a maximum of $500,000 and a ten-year prison sentence.

The CTA also provides a limited safe harbor for violations of the beneficial ownership reporting requirements. Specifically, a person will not be subject to civil or criminal penalties if they (i) have reason to believe the report is inaccurate, and (ii) submit a corrected report no later than 90 days after the inaccurate report was submitted.

III. Conclusion

Despite Congress' stated intent of minimizing the administrative burden of the CTA, the reporting requirements are complex and may cause uncertainty for business owners. Given the CTA's significant penalties, careful consideration of what information will need to be included in the report is critical. To determine your obligations under the CTA and to help you prepare for the approaching reporting deadlines, please consult legal counsel to determine whether and to what extent the CTA's obligations apply to you or your business. Seigfreid Bingham is developing protocols to assist our clients in meeting their reporting obligations under the CTA.

This article is general in nature and does not constitute legal advice. The authors of this article, Tate Thompson, Nida Rais, Rachel Sterbenz, and John Fuchs are members of Seigfreid Bingham's Corporate Law Practice Group and routinely represent clients in corporate structuring and other general business matters. If you or your organization have questions about the impact of these developments, please contact Tate, Nida, Rachel, or John at 816.421.4460.